MONTANA LEGISLATIVE HISTORY

Chapter 646 19 89

Bill H 700 S _____ Original bill & history ✓ C

H. Committee on State Administration			S. Committee on Labor & Employment Relations		
Hearing Date(s)	Feb 17	✓ C	Hearing Date(s)	Mar 16	✓ C
		C		Mar 21	✓ C
		C			C
		C			C
Date Out	Feb 17	✓ C		Mar 21	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Note: A Conference Committee was appointed; its minutes were not recorded.

GRANT POLITICAL CANDIDATE THE RIGHT TO REPLY TO A NEWSPAPER EDITORIAL THAT ASSAILS OR OPPOSES THE CANDIDATE

2/14 INTRODUCED
2/14 REFERRED TO BUSINESS & ECONOMIC DEVELOPMENT
2/16 HEARING
2/18 COMMITTEE REPORT--BILL NOT PASSED
2/20 ADVERSE COMMITTEE REPORT ADOPTED 61 35

HB 697 INTRODUCED BY COHEN, ET AL.
ESTABLISH A FOREST ROAD CONSTRUCTION OPERATOR LICENSE

2/14 INTRODUCED
2/14 REFERRED TO NATURAL RESOURCES
2/15 FISCAL NOTE REQUESTED
2/17 HEARING
2/17 TABLED IN COMMITTEE
2/20 FISCAL NOTE RECEIVED
2/22 FISCAL NOTE PRINTED

HB 698 INTRODUCED BY CAMPBELL, ET AL.
GIVE COUNTIES AUTHORITY OVER AUTO WRECKING FACILITIES AND GRAVEYARDS

2/14 INTRODUCED
2/15 REFERRED TO LOCAL GOVERNMENT
2/16 HEARING
2/16 FISCAL NOTE REQUESTED
2/18 TABLED IN COMMITTEE
2/20 FISCAL NOTE RECEIVED

HB 699 INTRODUCED BY ADDY, ET AL.
PATIENT ASSURED COMPENSATION ACT

2/14 INTRODUCED
2/15 REFERRED TO JUDICIARY
2/16 FISCAL NOTE REQUESTED
2/17 HEARING
2/27 FISCAL NOTE RECEIVED
3/03 FISCAL NOTE PRINTED
3/21 COMMITTEE REPORT--BILL PASSED AS AMENDED
3/22 TAKEN FROM PRINTING
3/22 REREFERRED TO APPROPRIATIONS
3/28 HEARING
3/29 COMMITTEE REPORT--BILL PASSED AS AMENDED
3/29 2ND READING PASSED AS AMENDED 70 26
3/30 3RD READING PASSED 76 23

TRANSMITTED TO SENATE
3/31 REFERRED TO JUDICIARY
4/05 HEARING
4/11 HEARING
DIED IN COMMITTEE

HB 700 INTRODUCED BY PAVLOVICH, ET AL.
GRANT AN EMPLOYMENT PREFERENCE FOR VETERANS AND ELIGIBLE RELATIVES

HOUSE FINAL STATUS

2/14	INTRODUCED		
2/14	REFERRED TO STATE ADMINISTRATION		
2/17	HEARING		
2/17	COMMITTEE REPORT--BILL PASSED		
2/21	2ND READING PASSED	77	22
2/22	3RD READING PASSED	81	18
	TRANSMITTED TO SENATE		
2/28	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
3/16	HEARING		
3/23	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/28	2ND READING CONCURRED AS AMENDED	34	13
3/29	3RD READING CONCURRED	37	12
	RETURNED TO HOUSE WITH AMENDMENTS		
3/31	2ND READING AMENDMENTS NOT CONCURRED	63	34
4/04	CONFERENCE COMMITTEE APPOINTED		
4/08	CONFERENCE COMMITTEE REPORT NO. 1		
4/10	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	97	0
4/11	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	96	1
	SENATE		
4/05	CONFERENCE COMMITTEE APPOINTED		
4/08	CONFERENCE COMMITTEE REPORT NO. 1		
4/11	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
4/13	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	47	0
4/18	SIGNED BY SPEAKER		
4/19	SIGNED BY PRESIDENT		
4/19	TRANSMITTED TO GOVERNOR		
4/20	RETURNED TO HOUSE WITH GOVERNOR'S AMENDMENTS		
4/20	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	95	2
4/21	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	96	3
	TRANSMITTED TO SENATE		
4/21	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	50	0
4/21	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	49	1
	RETURNED TO HOUSE		
4/27	SIGNED BY PRESIDENT		
4/28	SIGNED BY SPEAKER		
4/28	TRANSMITTED TO GOVERNOR		
5/05	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 646 EFFECTIVE DATE: 10/01/89		

HB 701 INTRODUCED BY SWYSGOOD
REQUIRE CENTRAL FILING OF AGRICULTURAL LIENS WITH SECRETARY OF STATE

2/14	INTRODUCED		
2/15	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		

Form CS-32
Rev. 1985

STATUS SHEET

51st LEGISLATIVE SESSION

State Administration COMMITTEE

BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
HB 615	2-09-89	2-17-89	(tabled	2-17-89)							
HB 620	2-09-89	2-14-89	2-15-89			2-15-89					
HB 605	2-10-89	2-14-89	2-15-89			2-15-89					
HB 632	2-10-89	2-14-89	(tabled	2-16-89)							
HB 636	2-11-89	2-15-89	2-15-89	Put on consent calendar							
HB 660	2-13-89	2-16-89	2-17-89	2-17-89							
HB 691	2-14-89	2-16-89	2-16-89	2-16-89							
HB 693	2-14-89	2-17-89	(Tabled	2-16-89)							
HB 700	2-14-89	2-19-89	2-17-89	2-17-89							
HB 708	2-15-89	2-17-89	2-17-89	Put on consent calendar		2-17-89					
HB 714	2-15-89	2-16-89	(Tabled	2-17-89)							
HB 724	2-16-89	2-17-89	(Tabled	2-17-89)							
HB 730	2-16-89	2-17-89	2-17-89	2-17-89							

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

BILL NO. 700

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING AN EMPLOYMENT PREFERENCE TO CERTAIN MILITARY VETERANS AND THEIR ELIGIBLE RELATIVES IN APPOINTMENT TO CERTAIN POSITIONS AND IN RETENTION DURING REDUCTIONS IN FORCE; ELIMINATING THE EMPLOYMENT PREFERENCE PROVIDED TO VETERANS AND THEIR ELIGIBLE SPOUSES UNDER THE MONTANA VETERANS' AND HANDICAPPED PERSONS' EMPLOYMENT PREFERENCE ACT; AND AMENDING SECTIONS 10-2-402, 39-30-101 THROUGH 39-30-103, 39-30-201 THROUGH 39-30-203, 39-30-207, 49-2-405, AND 49-3-103, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6] requires the department of administration to adopt rules to implement [sections 1 through 5]. The legislature intends the rules to adequately provide for the administration of the point preference provided for in [section 2] and the retention preference provided for in [section 5], but to include only those rules that are reasonably necessary.

It is the desire of the legislature that the department take all necessary steps in formulating, proposing, and adopting rules to ensure that the public, particularly those persons and organizations that have shown past interest in the employment preference law, is afforded sufficient time and opportunity to participate in the rulemaking procedure. The department should give ample notice and hold necessary hearings to ensure adequate public participation.

Rules adopted by the department apply to both state and local government employers. In formulating its rules, the department should take this into consideration and adopt rules that can be used and applied by the broad spectrum of public employers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** **Definitions.** For the purposes of [sections 1 through 6], the following definitions apply:

(1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except for training, determining physical fitness, or service in the reserve or national guard.

(2) "Armed forces" means the United States:

(a) army, navy, air force, marine corps, and coast guard; and

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the veterans administration.

INTRODUCED BILL
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(3) "Disabled veteran" means a person:

(a) whether or not he is a veteran as defined in this section, who was separated under honorable conditions from active duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a law administered by the veterans administration or a military department; or

(b) who has received a purple heart medal.

(4) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who lost his life under honorable conditions while serving in the armed forces if:

(i) her husband is totally and permanently disabled; or

(ii) she is the widow of the father of the veteran and has not remarried;

(d) the mother of a service-connected permanently and totally disabled veteran if:

(i) her husband is totally and permanently disabled; or

(ii) she is the widow of the father of the veteran and

has not remarried.

(5) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a state position or a similar permanent, temporary, or seasonal position with a public employer other than the state. The term does not include:

(a) a state or local elected office;

(b) appointment by an elected official to a body such as a board, commission, committee, or council;

(c) appointment by an elected official to a public office if the appointment is provided for by law;

(d) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(e) engagement as an independent contractor or employment by an independent contractor.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system or a vocational-technical center;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that result in a numerical score to which percentage points may be added.

(8) "Under honorable conditions" means a discharge or separation from active duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges but does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who was separated under honorable conditions from active duty in the armed forces after having served more than 180 consecutive days, other than for training.

NEW SECTION. **Section 2. Point preference for certain applicants.** (1) Subject to the restrictions in subsections (2) and (3), whenever a public employer uses a scored procedure, an applicant for appointment to a position must have added to his score the following percentage points of the total possible points that may be granted in the scored procedure:

(a) 5 percentage points if the applicant is a veteran; and

(b) 10 percentage points if the applicant is a disabled veteran or an eligible relative.

(2) A veteran, disabled veteran, or eligible relative may not receive the percentage points provided for in subsection (1) unless the person:

(a) is a United States citizen; and

(b) received 70 or more percentage points of the total possible points that may be granted in the scored procedure.

(3) A disabled veteran who receives 10 percentage points under subsection (1)(b) may not receive an additional 5 percentage points under subsection (1)(a).

NEW SECTION. **Section 3. Notice and claim of preference.** (1) A public employer shall, by posting or on the application form, give notice of the point preference provided in [section 2].

(2) A job applicant who believes he is eligible to receive a point preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely preference claim for a position is a complete defense to an action instituted by an applicant under [section 4] with regard to that position.

(3) If an applicant for a position makes a timely written preference claim, the public employer shall give written notice of its hiring decision to the applicant

claiming preference.

NEW SECTION. **Section 4.** Enforcement of preference. (1) An applicant who believes he is entitled to but has not been given the point preference provided in [section 2] may, within 30 days of receipt of the notice of the hiring decision provided for in [section 3], submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) After following the procedure described in subsection (1), the applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts that on their face entitle the applicant to a point preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 5 or more than 10 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer applied the points under [section 2] and made a reasonable hiring decision. The applicant has the

burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference eligible applicant, the court shall order the public employer to comply with the provisions of [section 2]. In addition, the court shall, upon proper proof, grant an award of backpay, reasonable attorney fees, and costs.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to comply with the provisions of [section 2].

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section.

NEW SECTION. **Section 5.** Retention during reduction in force. (1) Subject to the restriction in subsections (2) and

(3), during a reduction in force, a public employer shall retain in a position:

(a) a veteran, disabled veteran, or eligible relative whose performance has not been rated unacceptable under a performance appraisal system over other employees with similar job duties and qualifications and same length of service; and

(b) a disabled veteran with a service-connected disability of 30% or more whose performance has not been rated unacceptable under a performance appraisal system over other veterans, disabled veterans, and eligible relatives with similar job duties and qualifications and same length of service.

(2) An employee is not entitled to preference in retention under subsection (1) unless he is a United States citizen.

(3) The preference in retention under subsection (1) does not apply to a position covered by a collective bargaining agreement.

NEW SECTION. **Section 6.** Adoption of rules. The department of administration shall adopt rules implementing [sections 1 through 5]. The department's rules apply to all local and state public employers.

Section 7. Section 10-2-402, MCA, is amended to read:

"10-2-402. Superintendent to be given veterans'

preference. In the selection of the superintendent of the Montana veterans' home, the department of institutions shall apply the preference granted to veterans and disabled veterans under [section 2], but not the preference granted to other persons~~,~~ ~~by~~ under [section 2] or Title 39, chapter 30."

Section 8. Section 39-30-101, MCA, is amended to read:

"39-30-101. Short title. This chapter may be cited as the "Montana ~~Veterans'~~ ~~and~~ Handicapped Persons' Employment Preference Act"."

Section 9. Section 39-30-102, MCA, is amended to read:

"39-30-102. Purposes. The purposes of this chapter are to ~~recognize veterans and disabled veterans for service to their country~~, recognize past employment discrimination against handicapped persons, and facilitate the habilitation, rehabilitation, and readjustment of ~~veterans, disabled veterans, and~~ handicapped persons."

Section 10. Section 39-30-103, MCA, is amended to read:

"39-30-103. Definitions. For the purposes of this chapter, the following definitions apply:

~~(1)~~ ~~"Active duty" means full time duty other than for training in the regular components of the United States army, air force, navy, marine corps, or coast guard with full pay and allowances. The term does not include monthly~~

drills, summer encampments, initial training, or other inactive or active duty for training in the national guard or reserves.

(2) "Disabled veteran" means an individual, whether or not he is a veteran as defined in this section, who:

(a) served on active duty;

(b) has been separated from service by honorable discharge; and

(c) suffers a service connected disability determined by the United States veterans administration to be 30% or more disabling.

(3)(1) "Eligible spouse" means:

(a) the unremarried surviving spouse of a veteran who died while on active duty or whose death resulted from a service connected disability; or

(b) the spouse of:

(i) a disabled veteran determined by the United States veterans administration to have a 100% service connected disability who is unable to use his employment preference because of his disability;

(ii) a person on active duty determined by the United States government to be missing in action or a prisoner of war; or

(iii) a handicapped person determined by the department of social and rehabilitation services to have a 100%

disability who is unable to use his employment preference because of his disability.

(4)(2) "Handicapped person" means an individual certified by the department of social and rehabilitation services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and which that limits the individual's ability to obtain, retain, or advance in employment.

(5)(3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection ~~(5)~~ (3), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection ~~(5)~~ (3), or current participants in a federally authorized employment program is not an initial hiring.

~~(6)~~(4) (a) "Mental impairment" means:

(i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

~~(7)~~(5) "Position" means a permanent or seasonal

position as defined in 2-18-101 for a state position or a similar permanent or seasonal position with a public employer other than the state. However, the term does not include:

(a) a temporary position as defined in 2-18-101 for a state position or similar temporary position with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

~~(8)~~(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of

Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical center or program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

~~(9)~~(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

~~(10)--(a)--"Veteran"-means-a-person-who:~~

~~(i)--served--on--active--duty--during--time--of--war-or declared-national-emergency-or-in-a-campaign--or--expedition for--which--a--campaign--badge--was-authorized-by-the-United States-congress-or-the-United-States-department-of--defense;~~ and

~~(ii)-has--been--separated--from--service--by--honorable discharge;~~

~~(b)--The-term-does-not-include-a-retired-member-of--the United--States-armed-forces-who-is-eligible-for-or-receiving a-military-retirement-allowance-based-on-length--of--service~~

~~and--does--not--include-any-other-retired-member-of-a-public retirement-system,-except-social-security,-that-is-supported in-whole-or-in-part-by-tax-revenues;~~

~~(11)-"War-or-declared-national-emergency"-means:~~

~~(a)--World-War-I,--beginning--on--April--6,--1917,--and ending-on-November-11,-1918,-both-dates-inclusive;~~

~~(b)--World--War--II,-beginning-on-December-7,-1941,-and ending-on-December-31,-1946,-both-dates-inclusive;~~

~~(c)--the--Korean--conflict,--military--expedition,---or police--action,--beginning--on--June-27,-1950,-and-ending-on January-31,-1955,-both-dates-inclusive;-and~~

~~(d)--the-Vietnam-conflict,-beginning-on-August-5,-1964, and-ending-on-May-7,-1975,-both-dates-inclusive;"~~

Section 11. Section 39-30-201, MCA, is amended to read:

"39-30-201. Employment preference in initial hiring. (1) (a) Except as provided in 10-2-402, in an initial hiring for a position, if a job applicant who is a veteran, disabled--veteran, handicapped person, or eligible spouse meets the eligibility requirements contained in 39-30-202 and claims a preference as required by 39-30-206, a public employer shall hire the applicant over any other applicant with substantially equal qualifications who is not a preference eligible applicant.

(b) In an initial hiring, a public employer shall hire

a ~~disabled veteran or~~ handicapped person over any other preference eligible applicant with substantially equal qualifications.

(2) The employment preference provided for in subsection (1) does not apply to a personnel action described in ~~subsection (5)(b) of~~ 39-30-103(3)(b) or to any other personnel action that is not an initial hiring."

Section 12. Section 39-30-202, MCA, is amended to read:

"39-30-202. Eligibility requirements. ~~No veteran, disabled veteran,~~ An eligible spouse, or handicapped person is not entitled to receive employment preference as provided in 39-30-201 unless:

(1) he is a United States citizen;

(2) he has resided continuously in the state for at least 1 year immediately before applying for employment;

(3) if applying for municipal or county employment, he has resided for at least 30 days immediately before applying for employment in the city, town, or county in which employment is sought; and

(4) he meets those requirements considered necessary by a public employer to successfully perform the essential duties of the position for which he is applying."

Section 13. Section 39-30-203, MCA, is amended to read:

"39-30-203. Duration of preference. Subject to 39-30-202:

~~(1)~~ a handicapped person, ~~the~~ or eligible spouse ~~of a handicapped person as described in subsection (3)(b)(iii) of 39-30-103, a disabled veteran, or the spouse of a disabled veteran as described in subsection (3)(b)(i) of 39-30-103~~ qualifies for employment preference as long as the disabling condition exists;

~~(2) a veteran, as defined in 39-30-103, who is not a disabled veteran, as defined in 39-30-103, qualifies for employment preference for no longer than 15 years following separation from service or for no longer than 5 years following December 20, 1983, whichever is later;~~

~~(3) the surviving spouse of a veteran as described in subsection (3)(a) of 39-30-103 qualifies for employment preference for as long as the spouse remains unmarried; and~~

~~(4) the spouse of a person described in subsection (3)(b)(ii) of 39-30-103 qualifies for employment preference for as long as the person is missing in action or a prisoner of war;~~"

Section 14. Section 39-30-207, MCA, is amended to read:

"39-30-207. Enforcement of preference. (1) An applicant who believes he has not been accorded his rights under this chapter may, within 30 days of receipt of the

notice of the hiring decision provided for in 39-30-206, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) The applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts ~~which~~ that on their face entitle the applicant to an employment preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 10 or more than 30 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination pursuant to ~~subsection (9) of~~ 39-30-103(7), and the applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation

of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court ~~has found~~ finds that the applicant is a preference eligible applicant, the court shall order the public employer to reopen the selection process for the position involved and shall grant the applicant reasonable attorney fees and court costs. The remedy provided by this section is the only remedy for a violation of this chapter, and a court may not grant any other relief in an action for violation of this chapter.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to reopen the selection process.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section."

Section 15. Section 49-2-405, MCA, is amended to read:

"49-2-405. Veterans' and handicapped persons' employment preference. The application of an employment preference as provided for in [sections 1 through 6], Title 39, chapter 30, and 10-2-402 by a public employer as defined in [section 1] and 39-30-103 may not be construed to

constitute a violation of this chapter."

Section 16. Section 49-3-103, MCA, is amended to read:

"**49-3-103. Permitted distinctions.** (1) Nothing in this chapter ~~shall--prohibit~~ prohibits any public or private employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, ~~which~~ that is not a subterfuge to evade the purposes of this chapter, except that ~~no such~~ an employee benefit plan ~~shall~~ may not excuse the failure to hire any individual; or

(c) from discharging or otherwise disciplining an individual for good cause.

(2) The application of an employment preference as provided for in [sections 1 through 6], Title 39, chapter 30, and 10-2-402 by a public employer as defined in [section 1] and 39-30-103 may not be construed to constitute a violation of this chapter."

NEW SECTION. **Section 17.** Extension of authority. Any

existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By Chairman Jan Brown, on February 17, 1989, at 8:00 a.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Judy Burggraff, Secretary; Lois Menzies, Staff Researcher

Announcements/Discussion:

HEARING ON HJR 28

Presentation and Opening Statement by Sponsor: Rep. Jessica Stickney, House District 26, Miles City, introduced the resolution. The preamble of this resolution states that less than one-fourth of the appointed boards, commissions, committees and councils in the state are gender-balanced. This bill urges that these entities be gender-balanced.

Rep. Stickney said that advisory boards play a great role within government to establish priorities for the spending of public money, they generate ideas for the administration of public policy and they greatly influence social, educational, environmental and economic conditions. There are about 130 appointed boards and commissions within state government with a total of approximately 1,044 persons serving on them. Of this total, only 228 are women, about 21 percent. Only 22 boards or commissions come even close to being gender-balanced. There are only two boards that have only women on them. The Fish and Game Commissions, the Board of Pardons, the Board of Labor Appeals, the Board of Athletics, the executive committees for the University of Montana and Eastern Montana College, the Youth and Justice Council, the State Banking Board and 31 other boards and commissions do not have any women on them. Forty-four other boards and commissions only have one woman member. These numbers are vastly disproportionate to the numbers of women who are involved. This resolution provides no quotas and no special treatment. It asks only for equality and equity. Public policy boards whose decisions affect all Montanans must be representative of all Montanans.

HEARING ON HB 700

Presentation and Opening Statement by Sponsor: Rep. Bob Pavlovich, House District 70, Butte, introduced the bill. Under current law, a veteran, handicapped person, or eligible spouse is entitled to a hiring preference for state and local government jobs. This preference requires a public employer to hire a job applicant who is a veteran, handicapped person or eligible spouse over any other applicant with substantially equal qualifications. This bill eliminates this preference for veterans and their eligible spouses and replaces it with a percentage point preference. Under this new preference, a veteran will receive 5 percentage points and a disabled veteran will receive 10 percentage points whenever a scored procedure is used. In addition, the bill gives veterans a preference during reductions in force.

Rep. Pavlovich said that this bill has been before the Legislature four times. Montana is the only state that has no veteran's preference because the former preference expired December 20, 1988. This bill does not affect the World War I and II veterans because they are mostly dead. Rep. Pavlovich said that this bill is mainly for the Vietnam veterans who received so little. He said that they want no compromise or amendments to the bill and would rather the Committee kill the bill than amend it.

Testifying Proponents and Who They Represent:

Joe Brand, Self

John Jones, Self

Dan Antonietti, USDL - VETS

Jim Rehbein, Department Commander, Disabled American Veterans

John Sloan, MOPH DAV

John Denherder, DAV Department, Legislative Director

Hal Manson, American Legion of Montana

George Poston, United Veterans of Montana

Rich Brown, Montana Board of Veterans' Affairs

Brenda Blackman Gruel, Self

Walt Wheeling, Self

Mike Workman, Self and ex-prisoners of war Bataan and Corrigador

Proponent Testimony:

JOE BRAND said he supports special treatment for the handicapped and the veterans. But the veteran's preference law just expired. Mr. Brand said that he has never received anything since he was a veteran, but he didn't need to use any of the benefits. Mr. Brand said that people are called to war and it disrupted their lives. He resents the handicapped coming and trying to take something from the veterans. Montana is the only state that does not have a veterans preference act.

JOHN JONES said he was here on his own recognizance and on the part of Korean and Vietnam veterans. He said that he stands for the veterans of the unpopular wars. Many of us will never forget those that have been physically impaired and emotionally hurt. Mr. Jones said that the arguments against this bill will be: we are not at war; it was their choice to go; most Vietnam and Koreans vets have jobs and do not need veteran's preference any more. Those people who are in the service during peace time have kept us out of wars.

DAN ANTONIETTI quoted from a civil rights bill of 1964. He said that Congress specifically exempted veterans from their statute. Mr. Antonietti believes that the draft is the most discriminatory act today on the books.

JIM REHBEIN, representing the Disabled American Veterans, said there were WACS, WAVES, and nurses that worked day and night for the cause. They are all a part of the service. He asked the Committee to think about what it would be like today if all of the veterans hadn't made the sacrifices they did. He said we could possibly be living under either Japanese Imperialism or a German dictatorship.

JOHN SLOAN, the commander of the Purple Heart, said that the veterans that gave up the best years of their lives deserve to have the veterans' preference bill passed.

JOHN DENHERDER said that he considers the veterans' preference act an honorarium to the veterans. He appealed to the Committee to send the bill out with a do pass.

HAL MANSON, representing the American Legion of Montana, said that they strongly support this bill. "People come home from wars and sometimes they are given good treatment and sometimes they are not. We, who came home from World War II, of course, were at the end of the big war. ... Because of the World War I veterans, we were well taken care of. Some of us had a need for veterans' preference and some didn't need it, but it was there for us. The same for those who came home from Korea. We had the law. The people who

came home from the Vietnam era . . . do not have this privilege. The law we had on the book for the last few years gave them practically nothing and even that law died in December. This bill takes nothing away from the handicapped. All it does is get us out of their law and into a law of our own. It doesn't take anything away from what they have now. People who come forward and say it is not good for the women should remember that there are a lot of women veterans from the Vietnam era. There are approximately 1,500 women in Montana between the ages of about 36 - 42 that served in the Vietnam era. Some of them in a combat area in Vietnam. These people deserve the veterans' preference. They deserve a little break for what they did."

GEORGE POSTON, representing the United Veterans' Committee of Montana, said there has recently been a large exodus of our people from Montana. The proportion of veterans in this exodus is much higher than any other category. This is happening because the "other people" have a preference for employment. There is affirmative action, handicap preference and other minority preference for jobs. The veteran has nothing. "Is that fair? Is that just? A draft dodger could go out here and wreck his automobile, be drunk, become handicapped and have a priority over a veteran. We need this veterans' preference."

RICH BROWN, Administrator, Veterans' Affairs Division for the State of Montana, said that on behalf of the Board of Veterans' Affairs in Montana, we are unanimously behind HB 700. He said that he "personally and professionally supports HB 700."

BRENDA BLACKMAN GRUEL presented written testimony (Exhibit 15).

WALT WHEELING, representing himself and the American ex-prisoners of war of Bataan and Corrigador, and said that they wholeheartedly support this bill.

MIKE WORKMAN, said he is a businessman from Eureka. He said he is not going to be looking for a job and will not need the five percent preference, but related a story of a young man that might have graduated from high school in Eureka in 1968 and didn't have enough money to go to college. He found himself in the rice paddies. When he returned home in 1971 he was three to four years behind in the job market. This bill is about helping veterans become competitive in the job market.

Committee Members Who Wished to be Listed as Proponents:

Rep. Helen O'Connell
Reo. Vernon Westlake
Rep. Roger DeBruycker
Rep. Harriet Hayne

Rep. Bob Gervais
Rep. Janet Moore
Rep. Wilbur Spring
Rep. Rande Roth
Rep. John Phillips
Rep. Bud Campbell
Rep. Richard Nelson
Rep. Ervin Davis
Rep. Duane Compton
Rep. Carolyn Squires

Testifying Opponents and Who They Represent:

Laurie Ekanger, Administrator, State Personnel Division, Department of Administration

Jeanne Doney, Interdepartmental Coordinating Committee for Women (ICCW)

Tim Harris, Montana Independent Living Project

Cathy Collins, President, Montana Independent Living Project's Board of Directors

Judy Harris, Governor's Commission for Employment of People with Disabilities

Jim Reynolds, Self

LeRoy Schramm, Office of the Commissioner of Higher Education, Montana University System

Bob Anderson, Montana School Boards Association

Bev Gibson, Montana Association of Counties

Diane Sands, Executive Director, Montana Women's Lobby

Opponent Testimony:

LAURIE EKANGER presented written testimony (Exhibit 16) and distributed amendments (Exhibit 17).

JEANNE DONEY presented written testimony (Exhibit 18).

TIM HARRIS presented written testimony (Exhibit 19).

CATHY COLLINS presented written testimony (Exhibit 20).

JUDY HARRIS, co-chairperson of the Governor's Committee for Employment of People with Disabilities, said that Governor's Committee is opposed to HB 700. This bill would deny equal preference to veterans, disabled veterans and civilian disabled together. It establishes two separate sets of preference rules. There is no need to create separate and

unequal preferences which will not only be difficult to administer but will also amount to discrimination against the civilian disabled. The new sections in the bill, as they apply to veterans, no longer require residency in Montana. With the job market in our state, the Committee cannot support a bill which would give the same preference opportunity to an out-of-state applicant as to a state applicant. Ms. Harris also said that the section of the bill that deals with eligible relatives of veterans creates an even larger pool of preference-eligible persons.

JIM REYNOLDS, an attorney in private practice in Helena, said his interest in the bill arises because he was the attorney that represented Vivian Crabtree in the landmark decision in 1983, which revived the veterans and handicapped preference issue in Montana. Mr. Reynolds said that for 70 years Montana has had an employment preference law that included both handicapped persons and veterans. In 1921, Montana recognized that handicapped people needed preference. That is when the two preferences were combined. Mr. Reynolds asked the Committee not to do away with 70 years of history by dividing the two preferences up as the bill proposes. Mr. Reynolds said that he finds it ironic that the veterans wish to divide the two preferences because it was a "blind, civilian woman that brought the preference issue back to the forefront in Montana."

LEROY SCHRAMM, representing the Montana University System, said that they are concerned with several parts of the bill. The layoff provisions are the ones that cause the most trouble. He said there are several campuses where bargaining agreements are not involved (Montana State University and Montana Tech). If they have a layoff on either of these campuses, and they had a nontenured veteran and a tenured non-veteran, they would have to lay off their tenured person first. Mr. Shram said that this would be an invitation to a lawsuit, and it would violate every contract that they have with the person. He also said he believes that school districts would probably be in the same situation. This bill would turn tenured rights "topsy turvy" depending on whether the person was a veteran or non-veteran.

Mr. Schramm said this bill covers temporary and part-time workers. The university system has over 5,000 student employees, none of which are covered by a collective bargaining agreement. These students are often laid off at the end of a year as work-study funds get tight. Mr. Schramm said that they would have to lay off every non-veteran student first, whether it be a woman, native American or the poorest student in the state that is working himself through school. We would have to keep the veteran student that would have access to the updated version of the G.I. bill, which offers educational benefits that other students do not have access to. He said the definition of "disabled veteran" has no minimum percentage, so even the

slightest disability calls for the extra preference of a disability. Mr. Shram said that he regularly participates in sports with people that have five percent disabilities and you wouldn't know it. The image of a disabled veteran conjures up someone in a wheelchair. He said that he thinks that there needs to be some limitations so that you are talking about a disability that has some impact on a person's day to day activities. He also noted "the definition of honorable discharge is a strange definition. It says, discharge under honorable conditions, but then when you look at it, it says it includes a general discharge."

BOB ANDERSON, representing the Montana School Boards Association, asked the Committee to consider what LeRoy Schramm said in regards to tenured positions. This law seems to be in conflict with all of the provisions we have to comply with in the area of tenure. Like many other parts of the bill, it would involve a lot of litigation to school districts.

BEV GIBSON, representing the Montana Association of Counties, presented written testimony (Exhibit 21).

DIANE SANDS, Executive Director, Montana Women's Lobby, said that the current preference law works, and it is fair. She asked the Committee to oppose the bill.

Opponent Submitting Written Testimony Who Did Not Testify:

Lynnette Stern, WomenCARE (Exhibit 22)

Questions From Committee Members:

REP. GERVAIS asked LeRoy Shram if he was a veteran. Mr. Schramm said no. REP. GERVAIS stated that Mr. Schramm had said in his testimony that there were 5,000 temporary student jobs at the universities that may be taken by veterans with veterans' preference. He asked Mr. Schramm if he knows how many veterans are looking for work. Mr. Schramm said there are a lot of veterans looking for work, and there are a lot of very, very poor students who are also looking for work. He said that he had wanted to point out that veterans have another source of revenue where many poor students do not.

Closing by Sponsor: Rep. Pavlovich said he doesn't see why the Department of Administration can't administer this point preference with a written test when the federal government is able to. If the Department of Administration is not able to do so, they should be replaced. He said that we are not here to hurt the handicapped. They have their preference act. We don't want to have anything to do with it and want to be separate. We are looking for an equal opportunity for the veteran that is equal with the next man down the street. They both take a test and if they are both equal on that test, the veteran gets that five or ten more points.

Rep. Pavlovich says that he finds it hard to believe that a veteran would try to take a university work-study student's job that probably pays less than minimum wage; but he wanted to remind the Committee that those jobs are funded with federal money. Right now the present law is unconstitutional. A recent supreme court decision ruled that residential requirements for veterans is not in accordance with constitutional rights. Rep. Pavlovich stated again that he did not want his bill amended.

DISPOSITION OF HB 700

Motion: Rep. O'Connell moved HB 700 DO PASS.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: A roll call vote was taken. The motion CARRIED 14 - 4.

DISPOSITION OF HB 580

Hearing Date: February 15, 1989

Motion: Rep. Campbell moved to TABLE HB 580.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED unanimously.

DISPOSITION OF HB 714

Hearing Date: February 16, 1989

Motion: Rep. O'Connell moved to TABLE HB 714.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED 16 - 2, with Reps. Squires and Whalen voting no.

DAILY ROLL CALL

STATE ADMINISTRATION COMMITTEE

51th LEGISLATIVE SESSION -- 1989

Date February 17, 1989

NAME	PRESENT	ABSENT	EXCUSED
Rep. Jan Brown, Chairman	✓		
Rep. Helen O'Connell, Vice Ch.	✓		
Rep. Vicki Cocchiarella	✓		
Rep. Ervin Davis	✓		
Rep. Floyd "Bob" Gervais	✓		
Rep. Janet Moore	✓		
Rep. Angela Russell	✓		
Rep. Carolyn Squires	✓		
Rep. Vernon Westlake	✓		
Rep. Timothy Whalen	✓		
Rep. Bud Campbell	✓		
Rep. Duane Compton	✓		
Rep. Roger DeBruycker	✓		
Rep. Harriet Hayne	✓		
Rep. Richard Nelson	✓		
Rep. John Phillips	✓		
Rep. Rande Roth	✓		
Rep. Wilbur Spring, Jr.	✓		

ROLL CALL VOTE

STATE ADMINISTRATION COMMITTEE

DATE 2-17-89 BILL NO. HB 700 NUMBER 1

NAME	AYE	NAY
Jan Brown		✓
Bud Campbell	✓	
Vicki Cocchiarella	✓	
Duane Compton	✓	
Ervin Davis	✓	
Roger DeBruycker	✓	
Floyd "Bob" Gervais	✓	
Harriet Hayne	✓	
Janet Moore	✓	
Richard Nelson		✓
Helen O'Connell	✓	
John Phillips	✓	
Rande Roth	✓	
Angela Russell		✓
Wilbur Spring, Jr.	✓	
Carolyn Squires	✓	
Vernon Westlake	✓	
Timothy Whalen		✓
TALLY	14	4

Judy Burggraff
Secretary

Jan Brown
Chairman

MOTION: [illegible]

Form CS-31
Rev. 1985

EXHIBIT 15
DATE 2-17-85
HB 700

WITNESS STATEMENT

NAME Brenda Blackman Gruel BILL NO. 700

ADDRESS 1823 Broadway

WHOM DO YOU REPRESENT? Self

SUPPORT X OPPOSE _____ AMEND _____

COMMENTS:

I am a member of the Disabled American Veterans Ladies Auxiliary and I strongly support the Veterans Preference Act as introduced by Representative Pavlovich. This will give veterans, their dependents and especially disabled veterans the dignity they deserve for honorable service to their country.

Thank you.

Brenda Blackman Gruel

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Form CS-34A
Rev. 1985

EXHIBIT 16
DATE 2-17-89
HB 700

Department of Administration
Testimony Opposing HB 700

1. The Veteran's and Handicapped Civilian's Preference Act was enacted in December, 1983.
   a. The current law has been in place for over 5 years. Hiring authorities are accustomed to administering it.

2. A Veteran's Preference bill has been introduced in every session since the special session in 1983.
   a. Many provisions of HB 700 were introduced in previous sessions and were not adopted.

3. 5 year grandfather clause expired on Dec. 20, 1988.
   a. Non-disabled vietnam veterans no longer eligible.
   b. Disabled veterans and newly discharged veterans are.
   c. An extension would require one simple change.
      - Not an excuse for a total revision of the law.

4. HB 700 changes all the definitions and eligibility provisions for veterans.
   a. Two different laws for hiring officials to apply.
      - One for Veterans - One for Handicapped.
   b. Both laws may apply to the same position vacancy.
      - What happens if one candidate has a point preference and another has "substantially equal preference."
   c. Keep provisions of the two as similar as possible.

5. HB 700: a point preference when numerically scored procedures are used.
   a. Does not require agencies to use scored procedures.
   b. This may create a false expectation among veterans who apply for a preference. For many state jobs, scored procedures are not used and no preference would be available.

6. Extension of the preference to other personnel actions besides initial hiring is the biggest problem with this bill.
   a. The reason for the preference is to assist people who are having difficulty reentering the job market.
   b. Do not introduce preference into the internal management of public agencies.
   c. Let employees gain promotions and retention based on their merit.
   d. Don't require mediocre employees be retained over those who have demonstrated superior performance.

7. Retention is the most litigious area of employment.
   a. Can lead to costly wrongful discharge cases.
   b. Section 5, Retention, must be eliminated.
   c. The definition of "initial hire" must be reinserted.

8. Three options:
   (1) Vote DO NOT PASS on HB 700.
   (2) Extend the duration of the preference in the current law and do only that, or
   (3) Amend the bill:
      - Make the two laws consistent.
      - Remove Section 5, Retention.
      - Reinstate "initial hire."

For more information call Laurie Ekanger or Mark Cress, State Personnel Division, 444-3871.

EXHIBIT 17
DATE 2-17-89
HB 700

1062

AMENDMENTS TO HB 700

1. Page 3, line 14
Following: "to"
Strike: "qualify for appointment to a position;"
Insert: "use his employment preference because of his disability;"

2. Page 4
Following: line 1
Insert: "(5) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a unit of the Montana university system or a vocational-technical center;

(v) a city or town for a municipal position, including a city or municipal court position;

(vi) a county for a county position, including a justice's court position; and

(vii) a school district or community college.

(b) A personnel action limited to current employees of a specific public entity identified in subsections (a)(i) through (a)(vii) of this subsection (5), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in subsections (a)(i) through (a)(vii) of this subsection (5), or current participants in a federally authorized employment program is not an initial hiring."

Renumber: all subsequent sections

3. Page 5, line 20
Following: "procedure,"
Insert: "in an initial hiring"

4. Page 6, line 7
Following: line 6
Strike: "received 70 or more percentage points of the total possible points that may be granted in the scored procedure."
Insert: "holds the minimum qualifications necessary to perform the duties of the position."

5. Page 6, line 12
Following: line 11
Insert: "(4) The employment preference provided for in subsection (1) does not apply to a personnel action described in Section 1 (5) or to any other personnel action that is not an initial hiring."

6. Page 8, lines 24 through 25
Strike: section 5 in its entirety
Renumber: all subsequent sections

EXHIBIT 18
DATE 2-17-89
HB 700

1 of 2

ICCW TESTIMONY PRESENTED TO THE
HOUSE STATE ADMINISTRATION COMMITTEE
February 17, 1989

HB 700 - EMPLOYMENT PREFERENCE TO
VETERANS AND HANDICAPPED PERSONS

My name is Jeanne Doney. I represent the Interdepartmental Coordinating Committee for Women, known as ICCW. Our purpose is to identify policies and procedures in state government which directly or indirectly result in discrimination against women. The ICCW was established in 1977 and we have been informed that the Governor will extend the executive order providing for the Committee.

The ICCW opposes HB 700 because the veterans preference provisions that it contains will have the effect of discriminating against women. Because so many more men than women have served in the armed forces, women are disadvantaged by the provisions of the proposed bill. It will result in fewer women being hired and promoted. More women will be terminated from employment during reductions-in-force.

The ICCW opposes HB 700 because the veterans preference provisions go beyond the point of reasonableness and fairness and will result in discrimination against women in employment. However, we are not opposed to the current employment preference extended to veterans and handicapped persons.

Discrimination against women will result largely due to the following provisions in the bill. First, the bill greatly broadens the definitions of "veteran" and "disabled veteran," thereby increasing the number of men who will benefit at the expense of women.

Second, the bill would extend the use of veterans preference to all scored hiring procedures. Again, this is disadvantageous to women at all stages of employment including initial hire and promotion, as well as termination due to reductions-in-force. This absolute preference would often result in less qualified applicants being hired, promoted, or retained at the expense of more qualified women. This goes far beyond the current procedure in which veterans preference is used to break a tie between the most qualified applicants for a job.

The current procedures are adequate and fair. According to Department of Administration figures, the percentage of veterans in state and local government is nearly identical to the percentage in the private sector.

Women in state government are entitled to an equal chance to serve the State of Montana with our talent and expertise. This bill would prevent us from accomplishing that goal.

The ICCW urges you to not pass this bill.

Thank you.

EXHIBIT
DATE 2-17-89
B 700

MONTANA INDEPENDENT LIVING PROJECT

38 South Last Chance Gulch
Helena, Montana 59601

(406) 442-5755
Toll Free 1-800-233-0805 (VOICE/TDD)

February 17, 1989

Re: HB 700

I am Tim Harris and I am employed by the Montana Independent Living Project. The Project is opposed to HB 700 as written because it establishes two separate and different preferences, one being much broader in scope and therefore discriminatory. There are specific exclusions in Section 10(3)(b), 10(5)(a), 10(5)(c), and 10(6)(b) which relate to people with disabilities that are not excluded in Section 1(5) which relate to certain military veterans and eligible relatives.

The Project does support the notion of employment preference for persons with disabilities as well as certain military veterans. Accordingly, we support amending existing state law to reestablish a veteran's preference. Any preference given should be indistinguishable from another, with no one group favored over another.

EXHIBIT 9 a
DATE 2-17-89
HB 700

Legislative testimony
Opposing HB 700
February 17, 1989

1 of 2

My name is Kathy Collins, and I am President of the Montana Independent Living Project's Board of Directors, Chairperson of the Montana Independent Living Council, and a teacher at C.R. Anderson Middle School here in Helena. I am here to OPPOSE HB700.

HB 700 presents another effort to exclude disabled civilians from protection under the Preference Act. As with its counterpart HB 38 introduced in the 1987 session, this law creates two separate preference laws: one comprehensive law for veterans and disabled veterans, and another less comprehensive for disabled civilians. Hiring statistics prove that the present law is working--more veterans, disabled veterans, and disabled civilians are being employed than ever before. It doesn't seem logical to change something that obviously works as the present law does.

HB 700 unreasonably inflates the number of veterans who qualify for preference, even going so far to include the mothers of veterans but, curiously, not their fathers. This increase in eligible recipients dilutes the true meaning of preference. When so many are qualified, it leaves doubts as to whether anyone isn't.

HB 700 would no longer guarantee equal preference to disabled civilians in employment. I can tell you that as a person who is short-statured, electric wheelchair dependent, hearing impaired, and severely physically disabled, employment has NOT come to me easily. In 1983 when I was applying for a teaching position in the Helena School District, I was protected by the law. My disability, for the first time in my life, gave me an edge in employment. And I can tell you now, six years later and still teaching at the same school, that edge paid off for me and my employer.

Opposing HB 700
Kathy Collins
Ex. #20
2012

However, the saddest part of HB 700 to me is the division this proposed bill has caused between disabled veterans and disabled civilians. Where once we worked toward common employment, access, and independent living goals, our movement has been torn apart by a law which favors one disabled group over another.

Barriers for employment exist for both groups. One must withstand the same discrimination as the other. I believe that unequal preference merely creates more barriers within the ~~disabled~~ disability movement itself. ~~Sadly,~~ Unfortunately, Julius Caesar's strategy of "Divide and conquer," comes through all too clearly in HB 700. And that is why I OPPOSE HB 700.

Thank you.

EXHIBIT 8/
DATE 2-17-89
HB 700

MONTANA
ASSOCIATION OF
COUNTIES

1802 11th Avenue
Helena, Montana 59601
(406) 442-5209

February 17, 1989

Rep. Jan Brown, Chairman
House State Administration Committee

House Bill 700 - Establishing Separate Veterans Preference Law

If the preference laws are not totally repealed in favor of Equal Opportunity Employment and Affirmative Action Plans, then MACo wishes to support the current laws governing preference hiring for veterans and eligible spouses.

In 1983 we worked together with this legislative body to define a fair, workable veterans and handicapped persons preference law. We see no reason to undo all the hard work that was accomplished at that time.

The proposed bill greatly broadens the Veterans Preference laws: it includes a broader definition of veterans and disabled veterans, broadens the eligible relatives to be given preference, includes temporary positions in the affected jobs, puts in place scored testing procedures, includes reductions in force rather than just initial hiring, and removes any time restrictions for application of the preference laws for either veterans or their eligible relatives.

We feel this bill goes too far, and unfairly discriminates against persons who have not had the opportunity serve in the armed forces of the United States.

We ask that you do not approve House Bill 700.

EXHIBIT 22
DATE 2-17-89
HB 700

1 of

WomenCARE

P. O. Box 1728, Helena, MT 59624

February 17, 1989

TESTIMONY OF LYNNETTE STERN OF WomenCARE BEFORE THE HOUSE STATE ADMINISTRATION COMMITTEE IN OPPOSITION TO HOUSE BILL 700 ON VETERAN'S PREFERENCE

My name is Lynnette Stern, and I have taken personal time to be here today to represent WomenCARE, a group representing Department of Labor and Industry employees. I will speak only to the veteran's preference portion of House Bill 700.

Like House Bill 38 two years ago, HB 700 would treat veterans, as well as women, inequitably and unfairly.

Veterans will have five percentage points added to their scores when applying for a job with a public employer who uses a scoring system. But the unmarried surviving spouse of a veteran will have ten percentage points added to the examination score. Why this disparity? Spouses did not serve in the Armed Forces, and many were not even married at the time their husbands served in the Armed Forces. Why should they get more points than the veteran himself? In fact, why should they get any points at all?

House Bill 700 also gives veteran's preference in retention if the position is not covered by a collective bargaining agreement. But if the veteran is a union member covered by a collective bargaining agreement, he doesn't get preference.

4-22
2062

We have some other concerns about this bill as far as how it will be administered. First, the bill extends this preference to temporary and seasonal employees, as well as permanent employees who now receive the preference.

Second, there is a potential loophole in that the percentage points added for veterans applies only when a scored procedure is followed. We will no doubt see many agencies drop such procedures, and we could end up with a variety of scoring and nonscoring procedures in public agencies.

Finally, as state employees and taxpayers, we are concerned about the likelihood that this may be a very expensive bill to the state, and an administrative nightmare to boot. The current veteran's preference system works fine as it is -- let's leave it alone.

I urge you to vote against House Bill 700. Thank you.

VISITORS' REGISTER

STATE ADMINISTRATION COMMITTEE

BILL NO. HB 700 DATE February 17, 1989

SPONSOR PAVLOVICH

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
JEANNE DONEY	ICCW		X
JAMES H. REHBEIN	DEPT. COMMANDER DISABLED AMERICAN VETERANS	X	
Kathy D. Collins	MT. Indep. Living Council		X
JUDY HARRIS	Governor's Comm for Employment of People with Disabilities		X
TIM HARRIS	MT. IND. LIVING PROJECT		X
Beverly Dixon	MT. ASSN of Co.'s		X
Sue Bartlett	Self		X
BOB Durkee	VFW	X	
John M. Denherder	DAV Dept Leg Dir	✓	
	Veterans	✓	
Mark Cress	Dept. of Admin		✓
Larry Longfellow	Dept of MT. V.F.W.	X	
Paul A-Gruel	S.W.F	X	
Brenda J. Good	Self	X	
Lynnette Stern	WomenCare - Dept of Labor + Industry		X
Barb Malensek	Dept of Labor & Ind	X	X
John F Sloan	MOPH DAV	X	
JOE BRAND	Self	X	
DALE PAWLOWSKI	Mont. Board Vet. Affairs	X	
JAMES T. MULAR	TRANSP. COMM. UNION	X	
Dick Baumberger	DAV	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

_____ COMMITTEE

BILL NO. 700 DATE _____

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Rick VanAken	Missoula	✓	
A.J Knutson	Glendive	✓	
Raymond West	Havre	✓	
Chris Gallus	Butte	✓	
[illegible]	Ft Peck	✓	
[illegible]	Anaconda	✓	
[illegible]	Billings	✓	
Dan Antonietti	USDL-VETS	✓	
T. Roy F. Schram	OCHE		✓
Hal Manson	American Legion	X	
George Foster	United Veterans Committee	X	
Neil Shepherd	V.F.W.	X	
WALT WHEELING	Helena - EX-POW's A.D.B.C.	X	
RICH BROWN	MT Bd Vets Affairs	X	
Mike Workman	Eureka, Mt.	X	
Laurie Ekanger	Dept. of Admin		X

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

2-17-89
2:10p
HB

STANDING COMMITTEE REPORT

February 17, 1989

Mr. Speaker: We, the committee on State Administration report that HOUSE BILL 700 (first reading copy -- white) do pass .

Signed: Jan Brown
Jan Brown, Chairman

LABOR COMMITTEE
51st LEGISLATIVE SESSION

BILL UMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CONCURR-IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURR IN AMME ED DATE
321	1-26-48	2-2-2-4	2-4					2-4			
B99	1-27-89	2-2, 2-4	2-4							2-4	
328	1-31-89	3-21, 3-22	3-22							3-22	
3154	2-6-89	2-28, 2-28	2-28							2-28	
3155	2-6-89	2-28, 2-28	2-28							2-28	
3348	2-7-89	3-2, 3-2	3-2					3-2			
3243	2-8-89	2-28, 3-2	3-2							3-2	
3391	2-9-89	3-2, 3-2	3-2					3-2			
3347	2-10-89	3-2, 3-2 3-7	3-7 Reconsidered 3-2					3-2		Reconsidered 3-7	
3377	2-28-89	3-7, 3-7 3-9	3-9					3-9			
3529	2-28-89	3-14, 3-21 3-22	3-22								
3541	2-28-89	3-7, 3-7 3-9	3-9					3-9			
3508	2-28-89	3-9, 3-16	3-16								3-16
3639	2-28-89	3-14, 3-16	3-16						3-16		
3677	2-28-89	3-14, 3-16	3-16					3-16			
3700	2-28-89	3-16, 3-21	3-21							3-21	
3710	2-28-89	3-14, 3-21	3-21							3-21	
3249	2-28-89	39, 3-9	3-9					3-9			

BILL NO. 700

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING AN EMPLOYMENT PREFERENCE TO CERTAIN MILITARY VETERANS AND THEIR ELIGIBLE RELATIVES; PROVIDING FOR APPOINTMENT TO CERTAIN POSITIONS AND IN RETENTION DURING REDUCTIONS IN FORCE; ELIMINATING THE EMPLOYMENT PREFERENCE PROVIDED TO VETERANS AND THEIR ELIGIBLE SPOUSES UNDER THE MONTANA VETERANS' AND HANDICAPPED PERSONS' EMPLOYMENT PREFERENCE ACT; AND AMENDING SECTIONS 10-2-402, 39-30-101 THROUGH 39-30-103, 39-30-201 THROUGH 39-30-203, 39-30-207, 49-2-405, AND 49-3-103, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6] requires the department of administration to adopt rules to implement [sections 1 through 5]. The legislature intends the rules to adequately provide for the administration of the point preference provided for in [section 2] and the retention preference provided for in [section 5], but to include only those rules that are reasonably necessary.

It is the desire of the legislature that the department take all necessary steps in formulating, proposing, and adopting rules to ensure that the public, particularly those

LC 1099/01

There is no change on HB 700 and will not be reprinted. Please refer to introduced (white) or second reading (yellow) for complete text.

THIRD READING
HB 700

APPROVED BY COMMITTEE
ON STATE ADMINISTRATION

BILL NO. 700

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING AN EMPLOYMENT PREFERENCE TO CERTAIN MILITARY VETERANS AND THEIR ELIGIBLE RELATIVES IN APPOINTMENT TO CERTAIN POSITIONS AND IN RETENTION DURING REDUCTIONS IN FORCE; ELIMINATING THE EMPLOYMENT PREFERENCE PROVIDED TO VETERANS AND THEIR ELIGIBLE SPOUSES UNDER THE MONTANA VETERANS' AND HANDICAPPED PERSONS' EMPLOYMENT PREFERENCE ACT; AND AMENDING SECTIONS 10-2-402, 39-30-101 THROUGH 39-30-103, 39-30-201 THROUGH 39-30-203, 39-30-207, 49-2-405, AND 49-3-103, MCA."

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SECOND READING
HB700

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

Call to Order: By Senator Gary C. Aklestad, on March 16, 1989, at 1:00 p.m. in Room 415 of the state Capitol.

ROLL CALL

Members Present: All members were present. Senator Tom Keating, Vice-chairman, Senator Sam Hofman, Senator J.D. Lynch, Senator Gerry Devlin, Senator Bob Pipinich, Senator Dennis Nathe, Senator Richard Manning, Senator Chet Blaylock, and Senator Gary C. Aklestad, Chairman.

Members Excused: There were no members excused.

Members Absent: There were no members absent.

Staff Present: Tom Gomez, Legislative Council Analyst.

Announcements/Discussion: There were no announcements or discussion.

HEARING ON HOUSE BILL 700

Presentation and Opening Statement by Sponsor:

Representative Bob Pavlovich, House District 70, Butte, Montana, sponsor of the bill stated HB 700 is a Veteran's Preference Act. In 1972, the Legislature held a special session in order to compromise. Pavlovich stated he was an interim committee member, and, in Pavlovich's opinion, no compromise was reached. The Veteran have nothing. Yesterday (March 15, 1989), New Mexico enacted a veteran's preference law. Montana is the only state that does not have veteran preference. The Great Fall Tribune featured an article about the veterans' losing fight for medical aid. The following is a quote from the paper: "If any man shall be sent forth as a soldier and shall return maimed, he shall be maintained completely by the colony for his life." Pavlovich stated the soldier is called away and must fight on foreign soil They may or may not come back. There is no preference for the returning soldier. HB 700 is patterned after federal law. Representative Pavlovich stated he would rather have HB 700 tabled, or killed if there are any amendments. The legislature compromised veterans preference,

and, now, Montana does not have veterans preference. (Exhibit 1)

List of Testifying Proponents and What Group they Represent:

Joe Brand, 812 Saddle Drive, Helena, Retire, stated he appeared before the committee on his own initiative. Brand stated when he served in the Legislature, he introduced a similar bill during the 1972 special session. Brand stated he did not acquire a GA education, has not been treated in a veteran's hospital, and has not received VA health benefits or housing. Brand stated he did not need benefits, but there are other veterans who do need a source of encouragement in order to come into society's main stream. Montana maintained a good veteran preference bill for many years until the Crabtree Court case. The Crabtree case had nothing to do with veterans. The Crabtree case dealt with the disabled. The disabled were also included in veterans preference. The aim was to separate the two so each had individual identity. Mr. Brand stated he has not seen a veteran testify against an affirmative action program. Brand stated he has supported affirmative actions programs and handicap causes. Now the affirmative action and handicap people are testifying against veterans, saying the veterans are being taken care of by Administrative Procedures Act. This is not true. Brand stated the veterans can not let bureaucrats dictate policy, when the veterans do not have an opportunity to testify. The veterans have not testified against affirmative action, the handicap, or any other people who needed help. Montana is the only state in the Union that does not have a veteran preference act.

The national government is currently establishing an veteran's administrator. The new policy will require a new agency. The veterans feel strongly about HB 700, but stated he has heard some veterans are apposed to HB 700. Brand stated most veterans do not think HB 700 is detrimental. The people who oppose HB 700 are the ones that should be included, according to Brand. HB 700 is going to effect Vietnam Veterans and perhaps a few Korean Veterans. Montana and the nation have denied the Vietnam Veterans many things. Vietnam was an unpopular war. Brand asked why the government cannot do something for the Vietnam Vets. Brand urged the committee to support HB 700.

John E. Sloan, representing the service men and women who wear the Purple Heart, as charted by the US Congress, stated the organization is exclusively for combat wounded veterans. The organization strongly supports HB 700. Mr Sloan said he is talking about the young men and women who gave up the best years of their lives to serve their country during war

time. Many of the soldiers came home minus arms, legs, loss of vision, muscle injuries, post traumatic deformities, residuals from malnutrition, combat fatigue, loss of hearing, and with many other disabilities or diseases. Historically, Montana has had more veterans per capita than most other states. While these veterans willingly served their country, they did so at the expense of their careers. During the time the veteran served, their non-veteran peers were getting their education and furthering their careers. The veterans deferred their education and careers while serving their country. The five and ten percent preference provided by HB 700 will help restore the small part of the inequities imposed upon them by their military service. The unfavorable treatment of Montana war time veterans by the legislature during last sessions has been disgraceful. Mr Sloan asked the committee if these actions fully reflect the feelings of Montana people, and the belief of what the military fought for, or is this the legacy Montanans want to pass to their children. Sloan stated the benefits bestowed on veterans will meet with the unqualified approval of all "right thinking" Montanans. Sloan requested favorable consideration concerning HB 700.

Representative Bob Gervais, House District 9, Richland County, stated he is retired from Federal Government, and is a Korean combat infantry veteran. Representative Gervais stated HB 700 may not help Korean Veterans. Gervais compared the native American Indian with the veteran. The Native American Indian had the highest percentage rate of military service people. Montanan Native Americans have the highest ethnic percentage statistics in the nation when comparing Veterans to Native Americans. Representative Gervais stated the Native Americans were taken away from their homeland, sent over seas, lost property, lost a way of life, and lost families while they were gone. The situation represents broken promises. Representative Gervais stated he received his job under Federal preference and recommended to the committee a do pass recommendation.

Dan Antonietti, Director of Veterans Employment and Training Division, U.S. Department of Labor stated he served on the American Legion National Committee. Mr. Antonietti stated HB 700 defines a permanent, temporary, or seasonal position, as defined in 218-101 in Montana statutes. Am external recruitment record for the Department of Revenue shows the department recruits within a local, region, or national area, on campus, as well as other places. All of the announcements require the applicant to fill out Montana state employment application, PV 25. The application includes the veterans and handicapped section. Job seekers are being asked for this information. One would think the Civil Rights law would be a vehicle for those who would

challenge veterans preference. Today, there are 47.1 percent women working in state government. This figure denotes an approximate 100% employment gain since the Vietnam era. The assistant Secretary of Labor through a state Department of Labor and Industry grant, claims both positions. The performance is measured by negotiated standards, which is negotiated between Veterans Employment, Training divisions, and state people. In total placement between veterans and eligible people, Montana is out of compliance. Montana is approximately 1,500 placements short from July 1 to March 1989. The Vietnam veterans are out of compliance: 1,299 were placed, but 1,651 should have been placed. The disabled veterans is out of compliance: 146 v. 167. HB 700 follows the pattern of federal law, which is supported by national veteran organizations: 1988 and 1989 policy goals and priorities.

Hal Manson, Helena, representing the American Legion of Montana, stated when the WWII and Korean Veterans came home, Montana had a veteran preference. Some veterans used the preference and some did not, but preference was available. The Vietnam Veterans do not have preference. Manson stated he did not say the Vietnam War worse than WWII, but it was every bit as bad. The veterans took time out of their lives. The Montana veterans preference law ended in December 1988. HB 700 takes nothing away from the nonmilitary disabled. The disabled people still have their law, and the law adequately protects them. HB 700 does not create another disabled persons law, but creates a new law giving preference to veterans, asking for five additional points for the disabled veterans. Women are included under HB 700. There are approximately 3,000 women veteran in Montana. Approximately 1,500 of the women are Vietnam Veterans. These women will have the added benefits if they are in the labor market seeking jobs covered by HB 700. The Vietnam Veteran are among the largest number of unemployed persons in Montana and the nation. The veteran, who serve the country in time of war, deserves a chance to gain "a little better" than those who do not serve, considering all other matters being equal. The Montana American Legion strongly supports HB 700 without amendments.

Rich Brown, Administrator of the Montana Veterans Affairs Division, stated he is appearing on behalf of Chairman Bob Durkee and all members of the Montana Board of Veterans who unanimously endorse HB 700. In five years of working with numerous bills surrounding the veterans preference, Mr. Brown is comfortable in supporting HB 700. Personally, professionally, and as a Vietnam combat veteran, Brown stated HB 700 is the best preference bill ever offered.

John Mahan, past national commander of the VFW, Helena, stated Mahan became involved as an attorney because of the right of retention. Mahan stated he was hired as an attorney by veterans who worked for Montana for 16 to 21 year, but were terminated. In a 1960 opinion, Attorney General Forrest Anderson stated veteran preference also applies to retention: to hire a veteran one day and fire him the next does not make sense. Retention is what makes HB 700 worthwhile. Most veterans have lived in the state from 20 to 50 years. They are told they can retire after a specified number of years. When these people become approximately 50-55 years old, the state agencies have reorganization. New people come in wanting their friends to have particular merit system jobs. These jobs are not political jobs appointed by the governor, but jobs within the Merit System. The reorganization does away with the jobs, and the person who has worked for many years is out. For this reason, Mahan stated he believes HB 700 is a just law. There are 106,000 veterans in Montana. Mr. Mahan believes Montana should not be the only state without veterans preference statute. Mr Mahan stated, concerning women, he has had the privilege during the past few weeks to interview high students for national and state level scholarships. Mr. Mahan stated approximately half of the girls interviewed are entering military service in order to receive scholarships. More women than men are applying for scholarships. Therefore, Mr. Mahan believes the law will equalize, if given a chance.

George Poston, Helena, Montana, United Veterans of Montana, stated there are veterans testifying to say they don't need HB 700. The law, as it is, is working for others because the veterans are not getting jobs. Statistics show the working age veterans represents the highest group, or level of people leaving the state, so many so, that Montana may lose one of our U.S. Representatives. The 22-44 age bracket is the group leaving, and the majority are veterans.

Walt Wheeling, 1120 Billings, Ave, Helena, representing the Ex-prisoners of War and the American Defenders of the Corregidor, stated support of HB 700.

Larry Longfellow, Quartermaster Adjutant, Veterans of Foreign Wars, offered support of HB 700. Mr. Longfellow submitted written testimony. (Exhibit 1)

Andy Gruel, 1823 Broadway, Helena, MT, stated support of HB 700.

John Denherder, 3333 Canyon Ferry Road, East Helena, Department of Montana Disabled Veterans and 32nd Degree Mason, stated he is a veteran of three war time eras and

three uniformed services. Mr. Denherder wonders what has happened to America's respect when Americans lose veteran preference acts. Mr. Denherder believes it a national and ship-of-state disgrace.

Dick Baumberger, 5495 N. Montana Ave., Helena, Montana, representing the Disabled American Veterans, stated he finds the situation frustrating. Baumberger stated he sat through the House hearing and heard the handicapped testify concerning their needs for handicapped parking, which they received. Mr Baumberger stated he (as a veteran) feels like a second class Montana citizen. He has not voted against school bills issues, and, now, he finds it frustrating to hear others testify against veterans's needs.

List of Testifying Opponents and What Group They Represent:

Lauri Ekanger, Administrator, representing the State Personnel Division.

TESTIMONY:

Laurie Ekanger, State Personnel Division, Administrator of the Personnel Division, representing the State Executive Branch, State Revenue, stated she has heard proponents imply veterans are not getting state government jobs. The department surveyed the work force in August to find 20% of the state managers are veterans. The proponents of HB 700 say there is no preference, this is not true. There is a preference period, which is 15 years after a war. We have not had a recent war. The Vietnam War preference period has expired. The preference kicks in again any time there is a new war or preventive campaign, like Grenada or the Persian Gulf. The way the existing preference works is: The non-veteran must be significantly more qualified in order to get a job over the veteran. By contrast, HB 700 will set up a preference for peace time veterans, volunteers, non-resident veterans, retired veterans, and anyone who serves for six months in the military. HB 700 also includes relatives. HB 700 vastly expands veterans preference. Unlike the federal government, Montana does not administer civil service tests for all state jobs. If the state had sophisticated resources, Montana could add points to the task force. Hiring for Montana state jobs is completely decentralized. Each state agency has devised its own unsophisticated methods of hiring. Actually, HB 700 means there is no preference because there are no tests on which to add points. The legislature is being asked to take someone else's law and slap the law on Montana, even though it doesn't fit. State managers believe it is one thing to give preference to someone starting work in state government, but after the initial hiring, everyone should have an equal

chance for advancement. No one should be able to sit back and enjoy preference for their entire career. People, who deal with "advantaged people", know when personnel issues are decided on issues other than merit, and the highest achievers are not rewarded, and the entire work force is discouraged. The highest achievers are especially discouraged.

Ekanger stated work forces were reduced in 1982 with massive layoffs in state agencies, local government, non-profit organization and vocational technical centers. The Department of Labor and Industry were two division devastated by the layoffs. The department made one division out of two divisions. Both divisions had collective bargaining agreements. HB 700 does not apply to collective bargaining, nor would it have covered the 1982 layoff situation. HB 700 provides solutions, but does not fit the problem. HB 700 does not exempt temporary provision and job training programs from hiring preference. Temporary positions will be a major problem. The Department of Institutions characterized the state agency problems concerning temporary situations. The purpose of the law is to give the state agencies direction. HB 700 fits the federal bureaucracy, but does not present useful direction. Veterans hold 36% of state management jobs, 41% of Law Enforcement Jobs, 52% of state skilled craft jobs. Ekanger asked the committee to let government concentrate on excellence and to service to the public. Ms Ekanger encouraged the committee not to pass HB 700. (Exhibit 2)

Leroy H. Schramm, 33 S. Last Chance, Helena, Montana University System lobbyist, stated the university system is the second largest public employer covered by HB 700. (Exhibit 3) A war time veteran qualifies for one preference no longer than 15 years following separation of service or no longer than 5 years following December 20, 1983, the year the act was passed, or whatever is later. Effectively, December 20, 1988, the war time preference is no longer, except for those who have received campaign badges. If there is going to be a preference, something has to be done. HB 700 raises so many questions, and it is not the answer. The present act, which expired in part on December 20, 1988, is still on the books, but covers only war time veterans. The Korean and the Vietnam Vet deserve something for defending their country. HB 700 does not limit jurisdiction to just these people. HB 700 allows retirees to get preference. HB 700 is supposed to be modeled after the federal act. According to federal retention standings, a retired member of a uniform service is considered preference eligible only if the members meets at least one of the following consideration: 1) The person is a disabled veteran; 2) The person's retiree pay is based on less than twenty years service; 3)

the person has been in the civil service for more than twenty-five years; 4) The person is retired at the rank of major or above is eligible only if disabled. The federal government puts a real restriction on retirees. HB 700 does not. HB allows double dipping. The present act says in order to get extra benefits, the disabled veteran must have a 30% compensable service connected disability. The present act requires the person have a honorable discharge. The government education project, called military discharge upgrading, tries to get people with general discharge upgraded to honorable discharges. Congress has differentiated between general discharges and honorable discharges. The present law requires the individual to be a Montana resident before collecting preference eligibility is granted. HB 700 allows any veteran from any state to qualify. The coverage is further broadened to include all educational institutions. Among those covered are student employees who work as temporary and part time employees. Under the state work-study program, if there is a vet and a non-vet who start working at the same time together, but due to cuts, the vet will stay and the non vet will be terminated. The education sector would like to be able to make a termination decision based on a need factor. Written testimony was submitted. (Exhibit 3)

Jim Nys, Box 5 Clancy, MT, handicapped Vietnam Veteran, State agency personnel officer and personnel consultant to many private businesses, stated opposition to HB 700. (Exhibit 4)

Connie Cole, Interdepartmental Coordinating Committee for Women, submitted written testimony. (Exhibit 5)

Bob Anderson, Helena, Montana School Board Association, stated when the previous act was drafted in 1982 the schools were not included. The main reason, in many cases, was the people who hire within the school systems are volunteers. Any time the law is complicated, litigation results. An example HB 700 could bring. On page nine, the bill deals with automatic preference for veterans during a reduction in force. An example: Teacher A has taught for four years and has obtained tenure. Teacher B has taught for only one year, but has taught for eight years elsewhere. Teacher B is a nontenure teacher, but is a veteran. Under HB 700, as Mr. Anderson understands the bill, the person with the veterans preference would automatically be rehired over the person with tenure. Mr. Anderson questioned whether or not the person would be rehired due to possible litigation. The case could be litigated for a long time. Mr. Anderson urged the committee not to accept HB 700.

Beverly Gibson, Montana Association of Counties, presented written testimony prepared by John Pemberton, Director, Personnel and Labor Relations, Missoula County. Mr. Pemberton could not attend the hearing due to inclement weather. (Exhibit 6)

Tim Harris, Montana Independent Living Project, 38 S. Last Chance, Helena, MT, stated somewhere, sometime, in society determines between Legislative attitudes of the minds and hearts and people making law. Tim Harris believes a person's ability, not his disability counts. The idea of a veterans preference, separate from disability preference, has been introduced in the past sessions. The concept has been a cause of division between veterans and the disabled, and has led to non-productivity in other important areas. Name calling and mistrust on both side has been an issue. Why there are sides, in either cases, is a mystery. There is too much to be done which requires cooperation on everyone's part. Working together brings about advancement. Mr Harris stated he is not in favor of preference. Anyone who is hired in or retained in any position should be the most qualified person. A good working situation does not result when a person is forced to hire a particular person because of a disability. Veterans, disabled veterans, and disabled civilians should be treated equally in employment. There are a number of disabled who were injured prior to age eighteen and did not have an opportunity to join the armed services. Mr. Harris stated he is included in this category, and he would have joined if he had a choice. Mr. Harris urged the committee not to accept HB 700.

Corlan Gee (Corkey) Bush, Directory, Montana State University, Human Resources, Affirmative Action, Bozeman, MT, submitted written testimony. (Exhibit 7)

Diane Sands, Executive Director of the Montana Women Lobby, Helena, MT, submitted written testimony. (Exhibit 8)

Mary Vant Hull, City Commissioner, 416 E. Story, Bozeman, MT 59715, submitted written testimony. (Exhibit 9)

Questions From Committee Members:

Senator Hofman, stated a constituent, a thirty-year veteran and former Gallatin County Democratic Chairman, finds HB 700 to be discriminatory against women. Representative Pavlovich stated women belong to the armed forces, therefore they would be included in the legislation.

Senator Hofman asked why the vet's father is discriminatory against, when his mother is given special treatment according to the language of the bill. Representative stated

perhaps it is assumed the father has a job within the category.

Senator Hofman asked about the constitutionality of HB &700. Representative Pavlovich stated the question of constitutionality may arise if an out-of-state veteran was not hired, due to the fact when the person entered the military service, the nation did not care which state he signed the papers to enlist. Pavlovich stated the other states have the language, and they are in compliance to federal law.

Senator Hofman asked why the bill excludes collective bargaining. Collective bargaining is dealt with in the same manner, in compliance to federal law.

Senator Blaylock stated, as he understands the legislation, HB 700 opens veterans preference wide open for veterans. Anyone, who served in the armed forces, are classified as veterans. The 350,000 troops currently serving in Europe will be veterans upon dismissal. Senator Blaylock stated there are good points to HB 700, but the testimony given today is concerning the individuals who fought. Senator Blaylock stated he is prepared to offer an amendment to specify and define combat veterans. Senator Blaylock asked Representative Pavlovich if he would object to the amendment. Representative Pavlovich stated he would object because the Veterans presented HB 700 and asked no amendments be attached.

Senator Lynch stated the constitutionality of the"resident" has been ruled unconstitutional. The case concerned a welfare issue. A residential requirement cannot be adopted since the resident requirement has been ruled unconstitutional by the U.S. Supreme Court.

Senator Lynch asked Dan Antonietti about "reduction in force". Mr. Antonietti stated the federal law is an absolute. There are three federal government registers concerning "reduction in force: They are: 1) the non-veteran; 2) the veteran with 20% service connected; and 3) the veteran with 30% or more. This issue would be the "tie breaker" in the law. Everything must be equal before a veteran's preference can be made.

Senator Lynch questioned the general discharge status, stating there is nothing dishonorable about a general discharge. The federal law calls both an honorable discharge and a general discharge to be a discharge under honorable conditions. There is a certain stigma attached to a general discharge. Ninety-five percent of discharged people receive an honorable discharge. Senator Lynch stated the five additional percentile would included bad conduct, dishonorable

discharge or other conditions. Mr Antonietti stated he was seventeen when he enlisted in the US Navy. Prior to active duty, Mr. Antonietti stated he was in an automobile accident and confined in a private hospital for forty-three days. The Navy could not transfer Mr. Antonietti to a military hospital, Farragut, Idaho, due to medical conditions. Mr. Antonietti stated he has a U.S. Navy Certificate of Discharge Under Honorable Conditions. Later, Mr Antonietti served in the army, and was discharged. The discharge was an U.S. Army Discharge under honorable conditions. The difference is "under honorable conditions". The federal definition qualifies and defines military separation. There is an" other than honorable discharge" classification. HB 700 does not include any veteran discharged under other than honorable conditions.

Senator Keating stated at one time the State had HB 700 law in Montana law. Mr. Antonietti stated the previous 1921 law was stronger, absolute. The point system was in the law. The 1921 law was amended thirteen different times to consider WWII, Korea, Vietnam, and public law. The civilian handicapped was included in 1927. This is the bill that was repealed by the 1983 special session. Currently, the states of Massachusetts, New York, Illinois, and other states are absolute law. Montana legislation is a mini version of federal law. Senator Keating stated Montana does not have a point hiring system, but section 2 and section 6 alleges to point hiring systems. Senator Keating asked if HB 700 will replace the present hiring system. Senator Keating stated section 2 qualifies whenever a public employer uses a squared procedure, they use the term regarding point preference. If a public employe uses a point system, they must employ the specified procedure. Since there is not a point system, the law doesn't apply. HB 700 continues to read in section 6: " now the department of Administration shall adopt rules implementing sections one through five, which sets up a point system. Senator Keating stated HB 700 will replace what we already have. The legislation says the state of Montana shall adopt a point system. This is a change of the current hiring system.

Laurie Ekanger stated the department does not feel the law requires the point system. The department would draft rules that reflect the intent of the law. The department would write rules that would read: "If you use the point system, then this is how the department will apply the preference." A mandate to make all agencies adopt a point systems would be beyond the scope of the law. Senator Keating stated if any hiring point in state and local government wanted to employ a point system, they could, but if they did not want to they did not have to. Senator Keating stated the veteran preference would only apply in those areas where a point

system was utilized. There would not be a veterans's preference if there were no agencies using a point system. Ms Ekanger state yes.

Senator Blaylock asked what part of state government uses a point system. Ms Ekanger relied the hiring is so decentralized that the department only reviews applicant statistics. Ms Ekanger stated most agencies use a plus and minus system, but some agencies convert the system to points.

Senator Keating asked how many school districts, counties, university system, and other state businesses use the point system. Point system are used in various phases of school related hiring, depending on choice. There is not a uniform system used for all school districts. Many applicants are received, therefore the trustees must devise a point system to assist in sorting applicants. Senator Keating asked if the trustees thought they would deal with tenure teachers, they could opt not to use a point system. Mr. Anderson reiterated the nontenure, military veteran teacher, having eight years teaching experience, would be hired before the tenure teacher. This situation will cause major litigation problems. The Montana School Board Association would try to advise districts to stay away from point systems.

Closing by Sponsor:

Representative Pavlovich stated the information pamphlet, which he handed out, contains other pertinent information. Representative Pavlovich stated HB 700 passed second reading in the House 77 to 22 and third reading 82 to 17. The veterans want the bill to remain unamended. (Exhibit 10)

DISPOSITION OF HOUSE BILL 508

Discussion:

Tom Gomez, Legislative Council Analyst, stated the amendment makes a technical change in the title to reflect a change made in the House in Section 1 to limit the absolute preference over other applicants for positions coming vacant, if the position is consistent to the workers physical condition and vocational abilities. The second amendment clarifies that the absolute preference will be provided to an injured worker only to the extent allowed by law. The employer is released from the provisions of the subsections providing for the preference, and the option to have insurance coverage during the period of injury if the employee is terminated pursuant to other provisions of the law, or two years have elapsed from the date of the injury. The last amendment provides for the preservation of the

ROLL CALL

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE: March 16, 1989

	PRESENT	ABSENT	EXCUSED
SENATOR TOM KEATING	X		
SENATOR SAM HOFMAN	X		
SENATOR J.D. LYNCH	X		
SENATOR GERRY DEVLIN	X		
SENATOR BOB PIPINICH	X		
SENATOR DENNIS NATHE	X		
SENATOR RICHARD MANNING	X		
SENATOR CHET BLAYLOCK	X		
SENATOR GARY AKLESTAD	X		

STAN STEPHENS
GOVERNOR

State of Montana
Office of the Governor
Helena, Montana 59620
406-444-3111

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1 page 1 of 6 19
DATE 3-16-89
BILL NO. HB700

February 21, 1989

Larry H. Longfellow
Quartermaster Adjutant
Veterans of Foreign Wars
P.O. Box 6228
Helena, MT 59604

Dear Larry:

I have your letter of February 15, 1989 and the accompanying Resolution on Veterans' Preference.

Thank you very much for sending this along to me and I will advise my legislative representatives dealing with veterans' affairs to closely monitor this resolution as it makes its way through the legislature.

Sincerely,

Stan Stephens

STAN STEPHENS
Governor

1988-1989 PRIORITY GOALS

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1 page 2 of 6
DATE 3-16-89
BILL NO. HB 700

Shortly after the 89th National Convention in Chicago, National Committees met in Kansas City and Washington to establish priorities for the 1988-89 year, based on the resolutions adopted by the delegates in Chicago.

LEGISLATIVE GOALS

Elevate the VA

We fully support elevating the Veterans Administration to an executive department and specifying the Administrator of Veterans Affairs as a member of the President's Cabinet.

[On October 25, President Reagan signed the appropriate legislation elevating the VA to the Department of Veterans Affairs.]

An Adequate VA Budget

We prevail upon the Congress of the United States to completely fund those portions of the Veterans Administration budget as required to maintain the integrity of the entire VA benefit and health-care system and to completely support efforts for future health-care needs.

COLAs

Full cost-of-living adjustments at least equal to the change in the Consumer Price Index (CPI) be provided annually for all recipients of VA compensation and for all military retirees.

Herbicide Exposure

We actively support liberalizing the criteria to establish as service connected any disability associated with herbicide exposure.

VA Construction Budget

We call upon the Congress of the United States to provide an adequate annual funding level to allow the VA to plan now and initiate new construction efforts to meet the immediate future needs of our veterans.

Home Loan Guaranty

We strongly encourage the Congress to maintain the VA Home Loan Guaranty Program as the most viable and desirable means of home financing for veterans.

An Open National Cemetery

Actively support necessary legislation to provide our nation's veterans with an open national cemetery in every state.

Veterans' Education

Revitalize veterans' educational programs to provide assistance on a recurring basis to those veterans who are educationally disadvantaged, in particular, those who are dislocated workers by capitalizing upon cooperative education programs, private learning centers and Title IV of the Higher Education Amendment Act of 1986.

Veterans' Vocational Training and Retraining

Establish a National Veterans Vo tional Training and Retraining P gram, administered by the Assist Secretary for Veterans Employm and Training, that will assist veter to avoid obsolescence in the w place through recurring vocatio skills training, relocation incenti and income support while in train

Veterans' Federal Employment Opportunities

Implement a Veterans Federal E ployment Noncompetitive Appoi ment Program for which all veter are eligible regardless of ERA, a that implementing regulations str the merit of hiring veterans — particular, recently separated a disabled veterans.

Veterans' Preference

Call upon the Congress to rep Section 702, Public Law 94-502, a to reestablish veterans' preference veterans separated under honora conditions from active duty in t Armed Forces after having ser more than 180 consecutive days, ot than for training. That veterans' pr erence be assured and applied each level of the federal selecti process and that a distinct veter program staff element be establish in all OPM offices.

SECURITY GOALS

National Defense

Our National Security Program for 1988-1989 reaffirms our firm commitment to a strong national defense. The wide range of threats to our security and that of our allies and the vigorous challenges posed by the Soviet leadership require a national defense fully capable of deterring these threats to peace. A strong national defense, in common with strong and supportive allies, is the foundation of a foreign policy able to respond successfully to the global challenge of Communism.

Military Strength and Arms Reductions

The VFW supports a national defense that provides fully for our security requirements at home and abroad. We continue to urge a comprehensive modernization and research progr for our conventional and strate forces. Our conventional forces m be expanded to keep pace with ever-increasing range of threats.

The Army should be filled a maintained at 28 divisions to m adequately accomplish its missio The Naval forces should be expand to 15 aircraft carriers, while t Marine Corps should be fully m

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DISCHARGES

HONORABLE: A Separation With Honor

GENERAL: A Separation Under Honorable Conditions Includes .

1. Separation of Enlisted Women — Pregnancy where medical conditions disqualifies the enlisted woman for retention.

2. Discharge after enlistment for medical reasons.

3. Separation of sole surviving sons or daughters

4. Separation of surviving family members

5. Separation because of Dependency or Hardship

6. Discharge of aliens not lawfully admitted to the U.S.

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PERSONNEL SEPARATIONS 635-200
(15 April 1986 Update)

A. HONORABLE: a separation with honor
B. GENERAL: a separation under honorable conditions
C. UNDER OTHER THAN HONORABLE CONDITIONS: administrative separation under conditions other than honorable
D. DISHONORABLE: a discharge pursuant only to an approved sentence of a general court-martial
E. BAD CONDUCT: a discharge pursuant only to an approved sentence of a general or special court-marshal

1. Separation upon <u>expiration of enlistment or fulfillment of service obligation</u> will be awarded a character of service of HONORABLE, unless an entry level separation is required.

2. Separation for <u>Convenience of the Government</u> will be awarded a character of service of HONORABLE, UNDER HONORABLE CONDITIONS or an entry level separation.
   a) Exclusion from Applicability
   b) Secretarial Authority.
   c) Separation of sole surviving sons or daughters
   d) Separation of surviving family members
   e) Inability to perform prescribed duties due to parenthood
   f) Lack of jurisdiction
   g) Discharge of aliens not lawfully admitted to the U.S.
   h) Separation of personnel who did not meet procurement medical fitness standards
   i) Discharge for failure after enlistment to qualify medically for flight training
   j) Separation because of personality disorder
   k) Concealment of arrest record
   l) Failure to meet weight control standards

3. Separation because of <u>Dependency or Hardship</u> will be awarded a character of service of HONORABLE, UNDER HONORABLE CONDITIONS or an entry level separation.

4. Separation because of <u>Defective Enlistments and Inductions</u> will be awarded a character of service of HONORABLE, GENERAL DISCHARGE, UNDER OTHER THAN HONORABLE CONDITIONS or an entry level separation.
   a) Minority
   b) Erroneous enlistments, reenlistments, or extensions
   c) Defective or unfulfilled enlistment or reenlistment agreements
   d) Fraudulent entry

5. Separation of Enlisted Women - <u>Pregnancy</u> will be awarded a character of service of HONORABLE, UNDER HONORABLE CONDITIONS or an entry level separation.

6. Separation due to <u>Alcohol or Other Drug Abuse Rehabilitation Failure</u> will be awarded a character of service of HONORABLE, UNDER HONORABLE CONDITIONS.

7. Discharge for the Good of the Service normally an OTHER THAN HONORABLE DISCHARGE certificate is appropriate.

8. Entry level Separation is UNCHARACTERIZED

9. Retirement for Length of Service will be awarded a character of service of HONORABLE

10. Separation for Unsatisfactory Performance will be awarded a character of service of HONORABLE, or UNDER HONORABLE CONDITIONS.

11. Separation for Misconduct normally an OTHER THAN HONORABLE CONDITIONS certificate is appropriate.

12. Separation for Homosexuality the type of discharge will reflect the character of the member's service, normally, OTHER THAN HONORABLE CONDITIONS.

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FEMALE EMPLOYMENT

YEAR	STATE GOVERNMENT
1974	24.6 %
1979	38.8 %
1984	42.7 %
1989	47.1 %

SOURCE:

RESEARCH AND ANALYSIS BUREAU
DEPARTMENT OF LABOR AND INDUSTA

STATE OF MONTANA PAYROLL / PERSONNEL / POSITION CONTROL SYSTEM

ALL APPLICANTS

VETERANS PERFORMANCE
MONTHLY YEAR TO DATE
FOR THE PERIOD ENDING 02/28/89
FOR ALL FUND SOURCES

STATEWIDE
MONTANA

	STANDARDS NUMBER	STANDARDS PERCENT	ACTUAL NUMBER	ACTUAL PERCENT	MET
TOTAL APPLICANTS AVAILABLE			93,073		
NON-VETERANS			78,492	84.3338%	
VETERANS AND ELIGIBLES			14,581	15.6662%	
VIETNAM ERA VETS			7,023	7.5457%	
DISABLED VETS			683	0.7338%	
SPECIAL DISABLED			238	0.2557%	
TOTAL PLACEMENTS			18,081		
NON-VETERANS			15,380	19.5944%	
VETERANS AND ELIGIBLES	3,286	22.5336%	2,701	18.5241%	NO
VIETNAM ERA VETS	1,651	23.5133%	1,299	18.4964%	NO
DISABLED VETS	167	24.4930%	146	21.3763%	NO
TOTAL FCJL PLACEMENTS			1,962		
NON-VETERANS			1,435	1.8282%	
VIETNAM ERA VETS	154	2.1938%	285	4.0581%	YES
SPECIAL DISABLED	6	2.3767%	16	6.7227%	YES
TOTAL COUNSELING			5,068		
NON-VETERANS			3,616	4.6068%	
VETERANS AND ELIGIBLES	772	5.2978%	1,452	9.9582%	YES
VIETNAM ERA VETS	388	5.5282%	771	10.9782%	YES
DISABLED VETS	39	5.7585%	126	18.4480%	YES
TOTAL PLACED IN TRAINING			525		
NON-VETERANS			343	0.4370%	
VETERANS AND ELIGIBLES	0	0.0000%	182	1.2482%	YES
VIETNAM ERA VETS	0	0.0000%	100	1.4239%	YES
DISABLED VETS	0	0.0000%	13	1.9034%	YES
TOTAL SOME REPORTABLE SVC			48,835		
NON-VETERANS			39,063	49.7669%	
VETERANS AND ELIGIBLES	8,345	57.2319%	9,772	67.0187%	YES
VIETNAM ERA VETS	4,194	59.7203%	4,754	67.6919%	YES
DISABLED VETS	425	62.2086%	520	76.1347%	YES
TOTAL JOB DEVELOP CONTACTS			5,407		
NON-VETERANS			3,497	4.4552%	
VETERANS AND ELIGIBLES	747	5.1235%	1,910	13.0992%	YES
VIETNAM ERA VETS	375	5.3462%	939	13.3706%	YES
DISABLED VETS	38	5.5690%	131	19.1801%	YES

NOTE: PLACED IN TRAINING NEGOTIATED TO HAVE ZERO VALUES.

PERFORMANCE STANDARDS FOR THIS REPORT:
VETERANS & OTHER ELIGIBLE 15 %
VIETNAM ERA VETERANS 20 %
SPECIAL DISABLED VETERANS 30 %
DISABLED VETERANS 25 %

** AUTHOSITY FROM VETERANS' PROGRAM LETTER NO. 10-88, VETERANS' EMPLOYMENT AND TRAINING, U.S. DEPT. OF LABOR

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BILL NO. HB 700

VETERANS' ADMINISTRATION PROGRAM IN MONTANA

SATURDAY, JUNE 19, 1982

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON VETERANS' AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice at 8:27 a.m., in the auditorium, Social Rehabilitation Services Building, 111 Sanders Street, Helena, Mont., Hon. G. V. "Sonny" Montgomery (chairman of the subcommittee) presiding.

Present: Representatives Montgomery, Daschle, and Williams.

OPENING STATEMENT OF CHAIRMAN MONTGOMERY

Mr. MONTGOMERY. Good morning. The Subcommittee on Oversight and Investigations will come to order.

This is the first time the subcommittee has been in Montana, and we're delighted to be here. At this point, I'll introduce my colleagues to you. On my left is one of the brightest young members of our committee, Tom Daschle of South Dakota. Tom has been a member of our committee since his election to the 96th Congress. He has a particular interest in the concerns of Vietnam veterans and is the chairman of the Vietnam Veterans in Congress Caucus. Although I know it's not necessary, I'll also introduce Pat Williams of the Big Sky State of Montana. We're holding the hearing this morning at his request, as he is very interested in the veterans of Montana. Senator Max Baucus was unable to join us this morning, and has requested that he be allowed to submit a statement for inclusion in the hearing record.[1] Additionally, several others have requested permission to submit written statements. Without objection, it is so ordered.

We are meeting today to receive testimony on admitting practices and the quality of health care delivered by the Veterans' Administration in Montana, as well as the quality of service provided by the regional office at the Fort Harrison Veterans' Administration Center. We will also hear testimony on the concerns of Vietnam veterans, as well as Public Law 97-37, the Former Prisoner of War Benefits Act 1981.

This subcommittee has oversight responsibilities for veterans benefits and services which fall within the jurisdiction of the full Committee on Veterans' Affairs. I understand that certain wit-

[1] See p. 123.

". . . We have miles to go before we sleep and we have miles to go before we sleep . . ."

STATEMENT OF RICK FOOTE, REPORTER, BUTTE, MONT.

Enclosed is a copy of the series [1] I have done about the problems associated with delayed stress and Agent Orange contamination affecting Vietnam veterans.

I would appreciate it if you could see to it that it is incorporated in the hearing record from the Helena hearings.

I'm sorry I couldn't attend those hearings, but from the press accounts I've read, the testimony accurately reflected the frustration and sense of hopelessness that Vietnam veterans are experiencing.

Pat, the more I study this problem, particularly with regard to Agent Orange, the more I find that the studies that must be done will be time consuming and expensive.

I might just list a few concerns that were expressed to me when I addressed a group of Vietnam veterans who are members of the American Legion Post here.

(1) The effects of Agent Orange on DNA and whether the number of miscarriages among wives of Vietnam veterans is greater than that in general population.

(2) The fact that the Veterans' Administration puts the burden of proof on the veteran to show where the veteran was in Vietnam.

(3) Other potential medical effects of Agent Orange including:

High blood pressure. (This is a new one to me, but I think it might have more than a little validity).

Tingling in hands and feet.

High incidence of boils, these must be surgically removed.

Slow healing of bone and other parts of the body from accidents not associated with Vietnam duty.

Volitility of personality among veterans.

Furthermore, Pat, my studies have shown that far more Vietnam veterans might be suffering from the effects of delayed stress than previously believed.

Pat, nearly every time I talk to a veteran or a member of a veterans' family, I find that the veteran has found himself demonstrating at least one, and most times, more than one of the symptons generally associated with delayed stress.

I've also had local counselors come to me to ask for advice about how to treat delayed stress symptoms.

I think that points out that the VA must sponsor extensive clinics for counselors within the general population, not just VA counselors.

As a Vietnam veteran myself, I sincerely hope that you, in consort with Congress, can find some way to compel the VA to listen to what is going on with more than 3 million Vietnam veterans who are potential victims of Delayed Stress and Agent Orange.

Without some fast, effective action, Pat, there might be as many as three generations suffering from the ill effects.

If there is any other information I might provide, don't hesitate to call on me.

Thank you for the hearing, at least you've shown some interest.

STATEMENT OF GEORGE F. FRYETT, JR., VIETNAM VETERAN COORDINATOR, HELENA, MONT.

This document has been prepared for the Hearing before the Subcommittee on Veterans Affairs, U.S. Senate. Being held in Helena, Montana, June 19, 1982.

Much effort has been put into preparing this due to the various extremes of difficulty in many cases. A lot of which has come from the inattention to detail and subsequently the blatant neglect to follow the laws as they have been written.

These veterans and their families have massed together to try in someway or another to recall the perpetuated inequities that have been perpetrated upon them.

It is sometimes very strange to understand the very foreign attitude of social change and economic strife that is being felt by everyone of us in our own great country.

Though, however hard it may be to realize that this is an everyday occurrance shared by all, we were able to send out some thirty-three (33) copies of a rather, as much as possible simplified questionnaire.[2] We have received a number of these back and have put them together for your viewing.

[1] Retained in committee files.

[2] Retained in committee files.

If you should consider some of the information incomplete or too sketchy, I am more than sure that some of us would be more than happy to supply you with copies of the detailed situations that here to fore have been always considered unimportant.

I personally thank you for your coming to Helena at this time.

We too want a balanced budget, but no longer at the expense of forgotten veterans, due to cuts being made from the already earmarked moneys for programs and training that someone who has never been there or can begin to fathom their importance continues to push for.

STATEMENT OF DON GEIS, VIETNAM VETERAN, HELENA, MONT.

I would like to take this opportunity to thank you for taking the time to come to Montana to hear us, and for taking an interest in the plight of veterans here in Montana, and around our Nation.

My name is Don Gies, I am 48 years old, and my time in the U.S. Navy qualifies me for status as both a Korean and Vietnam veteran. I am employed, at least until the end of this month, as a Management Analyst with the Employment or Job Service of the State of Montana. I have over 16 years service with this Agency, and a number of my friends, as well as myself, are being terminated in a "Reduction in Force," ostensibly the result of "budget cuts" brought about by the National Administration's policies. My friends and associates are also veterans, or at least 89 percent of us being terminated are.

I appreciate that there is little you can do for my friends and I, but you can close the door, so to speak, on a loophole that was left when Congress drafted and passed Veteran's Preferance legislation. Times were good in those days, and I'm sure nobody gave any thought to the subject of retention of veterans when the bad days come and cuts may or may not be necessary. Because the legislation speaks of "preference in hiring," or merely "perference in employment," certain devious minds have been free to interpret your "intent" as having nothing to do with retention of veterans when times are tough.

I am the junior man in our group in terms of years of service to the State of Montana. Some of my associates have as high as 26 years of service, not counting military time. When we were hired, we were told "not to waste their time unless we were looking for a career, as they couldn't afford to waste time and money training people who did not intend to stay with the Agency." Now as we approach the end of our careers, we find that we are being booted into the street through the loophole in our veteran's preference laws. It is too late for us. By the time all the honorable members of the committee read this testimony, our careers will have ended. But, there is still time for you gentlemen to plug this loophole, before other vets can be pushed through it.

I will not explain at length what Montana's current Administration has seen fit to do to my friends and I. I will not even speculate on why they are doing it. I will not even speculate on the consequences to the Agency for terminating nearly all experienced Management personnel. I am attaching and submitting some exhibits for your consideration in this matter, and I would like to briefly call to your attention as well a few brief facts:

(1) Our top management tells us our jobs were eliminated because of a reorganization necessitated by "Reagan's budget cuts." (See exhibit Termination Letter.)

(2) When U.S.D.O.L. funding was tenatively cut by you gentlemen last October, we in the Agency voted to accept 35-hour weeks, which we all worked form the First of January until the 8th of March (a saving of $25,000 per week to the Agency), in the hope of avoiding layoffs.

(3) When you gentlemen restored our funding, you did so retro-actively, which obviously resulted in what amounts to "extra" funds being available in our Agency. The 1982 funding level for our Job Service is 174.8 positions. Before our lay-off, our on-board strength was a mere 144 positions. I suggest even more "extra" funds.

(4) In our reorganization, the Job Service is being merged with the Employment and Training Division, an organization which has served as Prime Sponsor for CETA programs, and whose funding is ending on June 30th. We were told by our Commissioner and our former Administrator, that when two people were evenly matched in all other categories, "seniority" would prevail. I submit my second exhibit for your consideration as proof that:

(A) Seniority, experience, age, technical knowledge, job skill and ability were not factors in deciding who was to retain employment and who was to go.

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(B) Veteran's Preference and Age Discrimination laws of this land are being flaunted in the manner of one who attempts to transfer property out of his possession prior to a bankruptcy proceeding. Such conduct should not and must not be allowed to succeed.

Gentlemen, I thank you for your time, and for coming to Montana to give Montana Veterans a chance to air our problems and grievances. Should you or your staff care to pursue this matter further, I shall be pleased to discuss this matter at length, and provide a number of other documents to substantiate my remarks. I can be reached at 3580 Wylie Drive, Helena, Montana, 59601, or you may call me at (406) 227-5301.

EXHIBIT 1

DEPARTMENT OF LABOR AND INDUSTRY,
COMMISSIONER'S OFFICE,
Helena, Mont., June 9, 1982.

DON GIES,
Job Service, Lockey & Roberts, Helena, Mont.

DEAR DON: Please accept this letter as official notification of the termination of your employment with the Job Service Division of the Department of Labor and Industry, effective on Wednesday, June 30, 1982. As you know, President Reagan's budget cuts have forced us to reorganize the Job Service and Employment and Training Divisions. This reduction in force is the result of that reorganization.

I will be happy to inform any prospective employer that this layoff does not reflect upon the quality of your work. I assure you that those who are laid off will be given the opportunity to return to this Department should our work load return to its former level or if openings should occur for any reason.

I, of course, regret the need to take this action and will be happy to do anything I can to help mitigate its effects.

Sincerely,

DAVE HUNTER, *Commissioner.*

EXHIBIT 2

The following individuals of the Montana Job Service Central Office Staff were advised verbally on April 23, 1982 that their jobs have been abolished and their sevices will not be required as of June 30, 1982.

Name	Unit	Years of service	Age (years)	Veteran status
Fred Frisch	Job Service	30	59	U.S. Army.
Bob Miller	do	21	51	U.S. Air Force.
Jack Egge	do	28	55	U.S. Army.
Hal Burt	do	20	55	U.S. Navy.
Larry Roberts	do	19	45	U.S. Army.
Don Gies	do	16	48	U.S. Navy.
George Skagen	CETA	10	39	Do.
George Henkle	do	2	63	Do.
Bev Belyeu	do	6	29	Nonveteran.
Total		152	444	8 veterans.
Average		16.89	49.3	[1] 89 veterans.

[1] Percent.

Under the proposed reorganization/consolidation, the following Employment and Training Division Staff are transfering onto the Montana Job Service Central Office Staff as of July 1, 1982.

Name	Unit	Years of service	Age (years)	Veteran status
Laurie Ekenger	E.T. Division	7	33	Nonveteran.
Mark Bowlds	do	8	31	Do.
Peggy Hartman	do	5	35	Do.

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Name	Unit	Years of service	Age (years)	Veteran status
Flo Smith	do	9	40	Do.
Barbara Bonifas	do	4	35	Do.
Jim Foley	do	6	29	Do.
Laurie Lamson	do	5	31	Do.
Janet McAlpine	do	3	25	Do.
Margie Puera	do	26	43	Do.
Joanne Sullivan	do	10	33	Do.
Total		83	335	0 veterans.
Average		8.3	33.5	[1] 0 veterans.

[1] Percent.

STATEMENT OF ALICE HARTMAN, WIFE OF VIETNAM VETERAN, CLYDE PARK, MONT.

I am Alice Hartman, of Clyde Park, Montana and I am very appreciative that you have taken the time to come to Montana to listen to the problems of the Viet Nam Veterans. My hope is that after you hear us you all can feel and know a part of the great seriousness of "Post Traumatic Stress". It is very important that you understand our problems because on June 19, 1982, a great many futures and lives may depend on whether or not you can really feel the depth this impact has had on our lives.

Just a year ago, my husband John, was diagnosed as being a victim of Chronic Post Traumatic Stress. Unless any of you have had to deal or known a Veteran with this problem I know it will be hard for you to know what it is all about, so please hear me as I tell you a bit of what it has been in our lives.

On May 4th, 1981, I walked into the front room and found my husband in the rocking chair, rocking and staring. I asked Him, "Honey are you all right", he looks up at me with tears in his eyes, then he started to tremble and burst into a sob. His reply was, "Babe I can't do it, I can't go on, I just don't have the strength." He was to go to work that afternoon and I said, "do you mean to go to work?", he said "no, I mean with life, I just can't handle it any more, if I end my life now you and the boys would be so much better off. Damn I work when I feel bad, I miss more work than I work; you and the boys deserve so much more than robbing Peter to pay Paul and not being able to live from pay day to pay day, and always worrying about bills. I have been to Doctors for years now and none of them have made me better and I don't understand this, why didn't that bastard tell me," (speaking) (of a Doctor in 1977) "he didn't know what was wrong instead of saying it was all in my head."

You see since 1970, we have been doctoring and as each year passed John's health continuously worsened. It started out with chloracne, nausea, aching, swelling, then kidney and bladder infections, then high blood pressure, chronic prostitis, surgery to remove the left testicle, a type of blood disorder, and weak and faint occurrances. Due to his medical problems he missed a large amount of work and this caused financial difficulties and we lost our 20 acre parcel. For all these years we have doctored and are doing so for the above to this day.

After we talked for a time, I made an appointment with our family Doctor and he wrote for a 30 day leave of absence from Johns employer, my husband has been unable to work since. He went to the VA hospital at Fort Harrison on May 26, 1981, he was treated for medical problems then he was sent to see Dr. Brian Davis, this is when we had to face the reality of Post Traumatic Stress, how can this be on top of everything else. I'll never forget the first reactions, my husband thought he must be crazy and this sent us both into a whirl with bad feelings, mistrust and what will you do next? We both wondered where we would go from here or what will the outcome be for us.

When I chose to attend group therapy for Post Traumatic Stress of Viet Nam Veterans wives at the Helen Comprehensive Guidance Clinic, the mixed emotions were terrible. I just knew there was no way I could share or talk about my personal life with anyone, then I thought Ignorance is Bliss but I knew that wouldn't do. I found I wasn't alone and there was an answer to the hell we had been living the past eleven years. The outburst of uncontrollable anger, this is when the verbal abuse became sickening with horrible name calling and how no good I was and if it weren't for me there would be no problems or how he wished the marriage never took place in the first place. Each time it became worse and verbal abuse turned into physical abuse, I finally go the state of what a terrible person I must be to be

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said.

Employees challenge lay-off

HELENA (AP) — Several senior employees are challenging their recent lay-offs from the state Job Service in Helena, contending they were unfairly replaced by younger, less-experienced workers from the agency's Employment and Training Division.

Some of those laid off have filed grievances, and two are charging discrimination on the basis of age, sex or the fact that they are military veterans.

One of those who lost a job has calculated that the nine administrators have an average age of 49 and average 17 years with the agency. He says the replacements have an average age of 34 and average only eight years of experience.

Eight of the nine laid off were male and veterans, while seven women and only one veteran are among the 10 retrained Training Division people.

Sixteen positions were eliminated in the Helena central office as of June 30 when the two divisions were merged.

Labor Department Administrator Dave Hunter says the lay-offs, which were triggered by reductions in federal funds under the Comprehensive Employment and Training Act, were made on the basis of qualifications and experience for the assignments.

Jess Fletcher, who headed the Job Service for 26 years until he retired in 1978, charged that "the CETA people were appointed on the basis of who they know, not what they know."

Hunter said he was aware of the political connections of some of the CETA people, and that made him look even harder to be sure the appointments were justified. Those include Laurie Lamson, wife of state Democratic Party Executive Director Joe Lamson, and Jim Foley, chairman of the Lewis and Clark County Democratic Party.

Hunter was manager of Gov. Ted Schwinden's campaign in 1980.

In May the new regional administrator of the U.S. Labor Department's Employment and Training Administration in Denver, Luis Sepulveda, objected to the layoffs as unnecessary. Last week, however, he said in an interview that he has visited the Helena headquarters and has decided the layoffs "appear to have been necessary."

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3-7. VETERAN PREFERENCE SUBGROUPS

a. Subgroups. Within each of the three tenure groups on a retention register, employees are listed by veteran preference subgroup. These subgroups are the same for both the competitive and excepted services. The subgroups are as follows:

(1) Subgroup AD includes each preference eligible employee who has a compensable service-connected disability of 30 percent or more.

(2) Subgroup A includes each preference eligible employee not in subgroup AD. (Veterans & Disabled Veterans under 30%

(3) Subgroup B includes each employee not eligible for veteran preference.

Within each group, all employees in subgroup B are released before any employee in subgroup A is released; and all employees in subgroup A are released before any in subgroup AD. Within each subgroup, employees are released in the order of their service dates beginning with the most recent service date. When employees in the same retention subgroup have identical service dates and are tied for release, the agency determines the order in which the tied employees are released. See section 4-4 for exceptions permitted to this regular order of release.

IT WAS A HANDICAPPED INDIVIDUAL THAT LED TO AN ABSOLUTE HIRING PREFERENCE FOR VETERANS AND HANDICAPPED PEOPLE - NOT A VETERAN. FEDERAL TAX DOLLARS HELPED PAY FOR PART OF THE COST OF VIVIAN CABTREE'S LAWSUIT AGAINST THE MONTANA STATE LIBRARY.

I WAS A MEMBER OF THE INTERIM LEGISLATIVE COMMITTEE TO STUDY AND RECOMMEND CHANGES IN THE LAW TO A POSSIBLE SPECIAL LEGISLATIVE SESSION.

THIS SPECIAL SESSION WAS CALLED BY GOVERNOR SCHWINDEN FOR DECEMBER 12, 1983. DURING THE DELIBERATIONS IN DISCUSSING THE ISSUES THERE WERE 22 AMENDMENTS ACTED ON BY THIS CHAMBER BEFORE GOING TO A NEW FREE CONFERENCE COMMITTEE. THERE WAS NEVER A COMPROMISE BETWEEN VETERANS AND WOMEN ON THE ISSUES OF THE PRESENT LAW. THE TRUE COMPROMISE WAS IN HB 9 INTRODUCED BY JOE BRAND WHICH WAS TABLED IN COMMITTEE. CONSEQUENTLY, I ALONG WITH THIRTY TWO OTHER MEMBERS OF THIS ASSEMBLY VOTED AGAINST THE PRESENT LAW. THIS VOTE TOOK PLACE ON DECEMBER 17, 1983

THE PRESENT LAW IS UNCONSTITUTIONAL. A RECENT SUPREME COURT DECISION RULED THAT RESIDENTIAL REQUIREMENTS FOR VETERANS IS NOT IN ACCORDANCE WITH THEIR CONSTITUTIONAL RIGHTS.

IN THE ATTORNEY GENERAL OF N.Y. v SOTO-LOPEZ DECISION, THE UNITED STATES SUPREME COURT RECENTLY RULED THAT STATES MAY NO LONGER EXCLUDE VETERANS FROM THEIR PREFERENCE SYSTEM BASED ON A RESIDENCY REQUIREMENT. IN RELEASING THE DECISION, JUSTICE WILLIAM J. BRENNAN STATED IN THE MAIN OPINION THAT " MEMBERS OF THE ARMED FORCES SERVE THE NATION AS A WHOLE " AND FURTHER NOTED THE NATION'S LONG-STANDING POLICY FOR " COMPENSATING VETERANS FOR THEIR SACRIFICES ". JUSTICE BRENNAN STATED THAT RESIDENCY REQUIREMENTS VIOLATES THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT AND IS A RESTRICTION ON THE CONSTITUTIONAL RIGHTS TO TRAVEL.

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It might appear that the Civil Rights Act of 1964 would provide an effective vehicle for establishing a prima facie case of discrimination against women through the use of statistics. This would then shift the burden to the defendant (government) to justify its practice of extending preference to veterans-particularly in those jurisdictions where such preference is absolute. However, in enacting Section 712 of the Civil Rights Act of 1964 [42 U.S.C., Section 2000(e), et seq.], Congress specifically

exempted veterans preference from attack under the act: "Nothing contained in this subchapter shall be construed to repeal or modify any federal, state, territorial, or local law creating special rights or preference for veterans."

As a result, the Civil Rights Act has generally not been an avenue of approach for those who would challenge veterans preference.

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Veterans within the State of Montana
with
SERVICE CONNECTED DISABILITIES

0%	75		
10%	3,293		
20%	1,441		
30%	1,135	1,135	
40%	775	775	
50%	404	404	
60%	442	442	
70%	247	247	
80%	143	143	
90%	61	61	
100%	502	502	
TOTAL	8,518	3,709	43.54%

SOURCE:
VA Statistical Center, Washington D.C.
FTS 373-3930

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Mr. Justice John C. Sheehy, dissenting:

The majority has given the statehouse gangs a blueprint on how to avoid the veterans' preference in job hiring. Simply parse the experience of the favored non-veteran into as many segments as needed, and award each segment the maximum points.

The successful applicant here was employed for ten years as an "operations assistant" at the local office of the Federal Land Bank. She did clerical and stenographic work. For that experience her job was segmented as follows:

Clerical office experience	6 points
Deeds and property descriptions	12 points
Mapping	12 points
Typing	8 points
Calculators	8 points
Other machines	6 points
Total	52 points

Olson had done work as a surveyor, had successfully completed a real estate training course, held a current real estate license for the state of Idaho, and had computer experience. Witness his comparable scoring:

Deeds and property descriptions	4 points
Calculators	4 points
Other machines	0 points

The "other machines" for which the successful applicant got maximum points were a bank proof machine, a bank posting machine, and a copy machine. The scorers did not include the water cooler, but probably would have if needed. None of these machines is used by an appraisal clerk except the copy machine, the technical difficulty of which can be mastered by a first-grader. The scorers ignored Olson's computer experience.

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Having rigged the scores for the successful applicant, the scorers then ignored the law, which declares that if the applicants are substantially equally qualified, the veterans' preference is decisive. Olson could not be hired under the scorers' view unless he had the highest score, but then he would not have to call on his preference rights. Thus is the veterans' preference emasculated.

Olson is not only a Viet Nam veteran, but is also a certified handicapped person. He was entitled to the job on both counts. We should make sure he got it.

John G. Sheehy
Justice

I concur in the foregoing dissent of Justice Sheehy.

William E. Smith
Justice

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Department of Administration
Testimony OPPOSING House Bill 700
Veteran's Employment Preference

1. Montana's Veteran's and Handicapped Civilian's Preference Act works fine.
   a. It is still in effect and grants a meaningful preference to war and campaign veterans for 15 years following discharge.
   b. Disabled veterans receive a preference for as long as they remain disabled.
   c. The proponent's claim that Montana no longer has a veteran's employment preference is UNTRUE.

2. A major effect of HB 700 is to extend the preference to PEACE-TIME veterans and many of their relatives.
   a. Veterans who enlisted and served 180 days in the U.S. in peace-time would have equal preference to returning combat veterans under HB 700.
   b. When the peace-time veteran dies, their surviving spouse would have a greater preference than the returning combat veteran.

3. HB 700 extends a preference to veterans in promotions and reductions in force.
   a. Merit could no longer be a primary factor in retention of public employees.
   b. Unless a peace-time veteran had "unacceptable" performance, they have a life-time preference against a lay off.
   c. This bill could significantly complicate the process required to lay off public workers and increase the risk of wrongful discharge law suits.

4. Under current law, veteran's hold a significant number of state government jobs.
   a. 36% of management jobs, 40.7% of law enforcement jobs, and 52.2% of skilled craft jobs.

5. HB 700 provides a point preference where numerically scored selection procedures are used.
   a. Many public agencies do not use scored procedures and no preference would be available.

6. HB 700 sets up two entirely separate preference laws.
   a. One for the handicapped and a different law for the veterans.

7. Please vote AGAINST House Bill 700

For more information call Laurie Ekanger or Mark Cress, State Personnel Division, 444-3871.

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VETERANS IN STATE GOVERNMENT
* Veterans Report 3-88 - Workforce 6-88

EEO-4 CATEGORY	Total Workforce	Vets Total	Vets %
A - Off. & Admin.	688	247	36.0
B - Professionals	2946	650	22.1
C - Technicians	1879	392	20.7
D - Pro. Ser. Wrks	614	250	40.7
E - Paraprofess.	744	128	17.2
F - Office/Cler.	1393	110	7.9
G - Skill. Craft	718	375	52.2
H - Ser/Maint.	445	163	36.6
TOTALS:	9,377	2315	24.7**

*Data was collected in a survey of state government employees conducted in August of 1987.

**Veterans are 24.3% of the Civilian Labor Force in Montana (1980 census) and are 27.6% of the non-clerical jobs in state government.

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VIETNAM VETERANS IN STATE GOVERNMENT
* Veterans Report 3-88 - Workforce 6-88

EEO-4 CATEGORY	Total Workforce	Vets Total	Vets %
A - Off. & Admin.	688	86	12.5
B - Professionals	2946	315	10.7
C - Technicians	1879	165	8.8
D - Pro. Ser. Wrks	614	105	17.1
E - Paraprofess.	744	50	6.7
F - Office/Cler.	1393	45	3.2
G - Skill. Craft	718	130	18.1
H - Ser/Maint.	445	56	12.6
TOTALS:	9,377	952	10.2**

*Data was collected in a survey of state governmnet employees conducted in August of 1987.
**Vietnam Veterans are 7% of the Civilian Labor Force in Montana (1980 census) and are 11.4% of non-clerical jobs in state government.

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MILITARY DISCHARGE UPGRADING

and Introduction to Veterans Administration Law

A Practice Manual

by

David F. Addlestone
John Kosloske
Lewis M. Milford
Keith D. Snyder
Barton F. Stichman
and the
National Veterans Law Center
of the Washington College of Law

Published by the Veterans Education Project
1346 Connecticut Avenue, N.W., Washington, D.C. 20036

takenly believed that such discharges would upgrade automatically within six months — a myth in the barracks and stockades that has survived to this day.

Each service created a Discharge Review Board (DRB)[10] in 1944 and a Board for Correction of Military Records (BCMR)[11] in 1946. The DRB has authority to hear an appeal of any adverse discharge, except one issued as a result of a general court-martial, if an application is filed by a veteran or his/her survivor within 15 years of discharge (this was waived until April 1, 1981). The Board must grant a personal appearance hearing and the veteran can challenge the propriety and equity of the character of discharge issued. If the result of the DRB is adverse, the veteran can apply to the BCMR which, like the DRB, has the authority to correct any error or injustice contained in a military record. By 1966, the traditional veterans organizations discontinued their strong opposition to the administrative discharge system, but they continue to provide free counsel to applicants before the Boards in Washington, D.C.[12]

Based on Department of Defense (DoD) estimates and reports, about 300,000 applications for discharge review have been heard since 1944, with about 75,000 discharges upgraded.[13] This upgrade rate is somewhat misleading because the overall rate remained at around 12% until the mid-1970s. It has since climbed to about 40%,[14] with a significantly higher rate of success for those who make a personal appearance with legally-trained counsel.[15]

The belated increase in the upgrade rate reflects the often conflicting powers of a variety of forces: public pressure on the government; the tendency of the military services to cling to any decision they have made no matter how insignificant it was to the maintenance of the military establishment; and the power of the traditional veterans organizations. Meanwhile, the traditional veterans organizations, despite a history of activism on behalf of their constituents,[16] never followed up their verbal attacks on the discharge system beyond providing counsel before the DRBs and BCMRs to all applicants who requested their assistance.

The great strides resulting from the legal activism of the 1960s did not affect discharge review. Consequently, discharge review law remains somewhat undeveloped, with efforts toward reform deferred until the last several years.[17]

During the Vietnam War, the problem of paper Vietnam-era veterans was adopted by and amnesty movements as one of their causes. volvement of anti-establishment forces (as opposed to veterans groups), placed the bad paper issue unfortunate political posture, where logic, and fairness were likely not to be dispositive.

1.3 THE ROLE OF THE AMNESTY MOVEMENT

The amnesty movement, by focusing attention bad discharges, provided the first impetus for nally and externally imposed reform at the DRB internal reform was instituted perhaps partly off external interference with the system and out of a recognition that "the turbulence creat the requirements of RVN [Vietnam], produced tion in which the administrative discharge when at its best, was operating in an almost sonal manner, and, when at its worse, was ope almost with assembly line procedures."[19] scribed later, external and internal reform o simultaneously, leading unpredictably to toda charge review system.

The amnesty movement made two st errors, which probably could not have been a given the strong moral basis of the moveme the divisions in American society. These were:

- An undue focus on absentees (so-calle serters) instead of on bad paper ve many of whom had either served in So Asia or served for lengthy perio s prior charge;[20] and
- Failure to grasp the depth of the oppos any form of discharge review except on dividual basis.

Moreover, the amnesty movement's adopt discharge review as a cause completely al traditional service organizations from support charge review reform, despite the latter's hist opposition to the administrative discharge syste

Discharge review reform was not to come guise of amnesty. Nonetheless, the late adop discharge review by the universal and uncond amnesty movement may not have harmed the because it set in motion the unpredictable se

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[10] 10 U.S.C. § 1553.

[11] 10 U.S.C. § 1552.

[12] *See* note 6 *supra* (particularly Elfron). Interestingly, even holders of General Discharges are excluded from membership in congressionally-chartered veterans organizations even though part of the price the organizations paid for the charter was their agreement to provide free counsel before the Review Boards.

[13] The estimated total incorporates a rough guess of BCMR upgrades. *See* App. 1A (more detailed upgrade statistics).

[14] The DoD compiles statistics semi-annually which are reported in the *Veterans Rights Newsletter* (formerly the *Discharge Upgrading Newsletter*).

[15] *See* note 64, Ch. 9 *infra*.

[16] *See* Elfron, *supra* note 6. The American Legion reportedly played a significant role in the WWI veterans Bonus March on Washington.

[17] In 1958, the federal courts first held that administrative discharges were reviewable by the courts, but even then relatively few successful cases followed. *See* Ch. 24 *infra*; Bibliography *infra*; note 6 *supra*.

[18] *See, e.g.*, P. Starr, THE DISCARDED ARMY: VETERANS AFTER NAM (1973).

[19] ADRB SOP, Annex F-1, para. 1.D., 44 Fed. Reg. 25,068 (19 may also be a recognition of what Senator Sam J. Ervin, served:

> Those who defend our rights must not be the only citizens who are denied their protections and, as a consequence, are returned to a civilian world that holds little promise for them. We must not ignore those servicemen who are daily eliminated in administrative settings which accord less than what the due process clause of the Fifth Amendment guarantees and less than what we owe those who are prepared to give their lives to safeguard our freedoms and our rights.

Ervin, *Military Administrative Discharges: Due Process in drums*, 10 SAN DIEGO L. REV. 9, 10 (1972).

[20] *See* Bell, *supra* note 7.

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MILITARY DISCHARGE UPGRADING

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The great strides resulting from the legal activism of the 1960s did not affect discharge review. Consequently, discharge review law remains somewhat undeveloped, with efforts toward reform deferred until the last several years.[17]

During the Vietnam War, the problem of bad paper Vietnam-era veterans was adopted by draft and amnesty movements as one of their causes.[18] The involvement of anti-establishment forces (as opposed to veterans groups), placed the bad paper issue in an unfortunate political posture, where logic, reason and fairness were likely not to be dispositive.

1.3 THE ROLE OF THE AMNESTY MOVEMENT

The amnesty movement, by focusing attention on bad discharges, provided the first impetus for internally and externally imposed reform at the DRBs. The internal reform was instituted perhaps partly to head off external interference with the system and partly out of a recognition that "the turbulence created by the requirements of RVN [Vietnam], produced a situation in which the administrative discharge system, when at its best, was operating in an almost impersonal manner, and, when at its worse, was operating almost with assembly line procedures."[19] As described later, external and internal reform occurred simultaneously, leading unpredictably to today's discharge review system.

The amnesty movement made two strategic errors, which probably could not have been avoided given the strong moral basis of the movement and the divisions in American society. These were:

- An undue focus on absentees (so-called deserters) instead of on bad paper veterans, many of whom had either served in Southeast Asia or served for lengthy periods prior to discharge;[20] and
- Failure to grasp the depth of the opposition to any form of discharge review except on an individual basis.

Moreover, the amnesty movement's adoption of discharge review as a cause completely alienated traditional service organizations from supporting discharge review reform, despite the latter's historic opposition to the administrative discharge system.

Discharge review reform was not to come in the guise of amnesty. Nonetheless, the late adoption of discharge review by the universal and unconditional amnesty movement may not have harmed the cause because it set in motion the unpredictable series

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[10] 10 U.S.C. § 1553.

[11] 10 U.S.C. § 1552.

[12] *See* note 6 *supra* (particularly Effron). Interestingly, even holders of General Discharges are excluded from membership in congressionally-chartered veterans organizations even though part of the price the organizations paid for the charter was their agreement to provide free counsel before the Review Boards.

[13] The estimated total incorporates a rough guess of BCMR upgrades. *See* App. 1A (more detailed upgrade statistics).

[14] The DoD compiles statistics semi-annually which are reported in the *Veterans Rights Newsletter* (formerly the *Discharge Upgrading Newsletter*).

[15] *See* note 64, Ch. 9 *infra*.

[16] *See* Effron, *supra* note 6. The American Legion reportedly played a significant role in the WWI veterans Bonus March on Washington.

[17] In 1958, the federal courts first held that administrative discharges were reviewable by the courts, but even then relatively few successful cases followed. *See* Ch. 24 *infra*, Bibliography *infra*; note 6 *supra*.

[18] *See, e.g.*, P. Starr, THE DISCARDED ARMY: VETERANS AFTER VIETNAM (1973).

[19] ADRB SOP, Annex F-1, para. 1.D., 44 Fed. Reg. 25,068 (1979). This may also be a recognition of what Senator Sam J. Ervin, Jr., observed:

> Those who defend our rights must not be the only citizens who are denied their protections and, as a consequence, are returned to a civilian world that holds little promise for them. We must not ignore those servicemen who are daily eliminated in administrative settings which accord less than what the due process clause of the Fifth Amendment guarantees and less than what we owe those who are prepared to give their lives to safeguard our freedoms and our rights.

Ervin, *Military Administrative Discharges: Due Process Undrums*, 10 SAN DIEGO L. REV. 9, 10 (1972).

[20] *See* Bell, *supra* note 7.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. Page 10 of 1
DATE 3-16-89
BILL NO. HB 700

VETERANS IN STATE GOVERNMENT

* Veterans Report 3-88 - Workforce 6-88

EEO-4 CATEGORY	Total Workforce	Vets Total	Vets %
A - Off. & Admin.	688	247	36.0
B - Professionals	2946	650	22.1
C - Technicians	1879	392	20.7
D - Pro. Ser. Wrks	614	250	40.7
E - Paraprofess.	744	128	17.2
F - Office/Cler.	1393	110	7.9
G - Skill. Craft	718	375	52.2
H - Ser/Maint.	445	163	36.6
TOTALS:	9,377	2315	24.7**

* Data was collected in a survey of state government employees conducted in August of 1987.

** Veterans are 24.3% of the Civilian Labor Force in Montana (1980 census) and are 27.6% of the non-clerical jobs in state government.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1 page 1 of 1
DATE 3-16-89
BILL NO. HB 700

VIETNAM VETERANS IN STATE GOVERNMENT

* Veterans Report 3-88 - Workforce 6-88

EEO-4 CATEGORY	Total Workforce	Vets Total	Vets %
A - Off. & Admin.	688	86	12.5
B - Professionals	2946	315	10.7
C - Technicians	1879	165	8.8
D - Pro. Ser. Wrks	614	105	17.1
E - Paraprofess.	744	50	6.7
F - Office/Cler.	1393	45	3.2
G - Skill. Craft	718	130	18.1
H - Ser/Maint.	445	56	12.6
TOTALS:	9,377	952	10.2**

* Data was collected in a survey of state government employees conducted in August of 1987.

** Vietnam Veterans are 7% of the Civilian Labor Force in Montana (1980 census) and are 11.4% of non-clerical jobs in state government.

EXHIBIT # 3 IS MISSING FROM THE ORIGINAL MINUTES.

(This sheet to be used by those testifying on a bill.) HB 700

NAME: Jim Nys DATE: 3/16/87

ADDRESS: Box 5 Nys Clancy, MT

PHONE: 933-5617

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: HB700

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENT: see Exhibit 4

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

My name is Jim Nys. I am a Handicapped Vietnam Veteran who served this country for 22 years in the United States Navy. I am also a state agency personnel officer and a personnel consultant to many private businesses. I am here today as a private citizen in opposition to HB700.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4 page 1 of 2
DATE 3-16-89
BILL NO. HB700

Many of you remember the 1983 Crabtree decision that resulted in a special legislative session in December 1983 because of the outrage of the citizens over the then existing veterans preference law. For six long days, the entire attention of the legislature and every citizen was on the issue of preference in public employment and even then the legislature had the benefit of just completed interim study on the issues. I believe the compromise reached in that session represents the interests of all Montanans and is the best public policy for Montana to follow.

The organized veterans groups have each session since 1983 proposed changes to the law to re-establish the pre-eminence of veterans and the relatives of veterans over other citizens of the state for public jobs. Do not assume that these organization reflect the viewpoint of all veterans particularly Vietnam Veterans.

As a veteran and a citizen, I fully support appropriate forms of recognition for the sacrifices made by those who defended our country in times of peril. As a result, I support the concept of veterans preference in employment but believe this bill to be so fatally flawed, replete with unanswered procedural questions such as who gets a job if you have a ten point preferred veteran and disabled civilian entitled to preference under the "old law"person in the same hiring pool. The bill creates conflicts with other federal mandates that must be observed by governmental employers laws and is blantantly sexist. Worst of all, the net effect of the legislature passing this law would be to entirely remove veterans preference as an issue in hiring since few state

In the reduction in force provisions the bill for some reason excludes union members (but doesn't in promotions or hiring). This is as if to say the state is less proud of its veteran employees who are union members because it doesn't give the same preference in lay offs. I suspect it will serve to drive another nail in the coffin of non-veteran state employees already woried about job security. I believe that lay offs are a tragedy and I cannot support a bill that distinquishes between employees based on a status denied to most women and those with disabilities in this state.

I am offended by the suggestions made by supporters of this bill that I am unpatriotic if I don't support the bill or that a vote against HB700 is a vote against veterans. In reality, a vote against HB700 is a vote to retain veterans preference in a workable and effective form as it now exists in law and in practice. A vote against HB700 is a vote against an unworkable and poorly conceived vehicle for a worthy and appropriate state purpose.

I could speak at length to the dozens of mechanical flaws and other problems with this bill but will instead offer my assistance to the committee by being available to answer any question you may have.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 4 page 2 of 2
DATE 3/16/89
BILL NO. HB 700

SENATE LABOR & EMPLOYMENT
EXHIBIT NO 5 page 1 of 4
DATE 3-16-87
BILL NO. HB 700

ICCW TESTIMONY
HOUSE BILL 700

Mr. Chairman and members of the committee, my name is Connie Cole. I represent the Interdepartmental Coordinating Committee for Women, known as ICCW. ICCW strongly supports the veteran's preference act currently enacted in Montana, the Veterans and Handicapped Person's Preference Act of 1984. This law provides needed services to returning veterans, veterans who have given up employment opportunities in order to serve our country in a time of need. This is the approach of the veterans preference law in effect in Montana today. We support the current veterans preference law and support its continuance.

House Bill 700 would diminish the effectiveness of veterans preference by broadening the definition of those eligible for preference from service during national emergency, campaign or expedition to completion of duties with an honorable or general discharge. This would result in more veterans competing for the same opportunities, reducing the chances of those who have sacrificed the most to serve their country.

The veterans preference should continue to be used for initial hire only; used as a tie breaker between two equally well qualified job candidates. Being retained on the job should depend solely on qualifications and job performance. Especially when we are faced with ever shrinking budgets and expanding responsibilities, it is imperative that the most qualified employees are retained if there is a reduction in force. No one is discriminated against and everyone receives an even chance based on work performance.

ICCW urges the committee to recognize the success of the veterans preference law currently in practice and the fact that changes to the current law in effect would result in discrimination against veterans who served during the national emergencies identified under the present law. We urge you to vote "no" on this unnecessary and inequitable bill.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

TED SCHWINDEN, GOVERNOR
1520 EAST SIXTH AVENUE
STATE OF MONTANA
DIRECTOR'S OFFICE (406) 444-6699
HELENA, MONTANA 59620

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5 2064
DATE 3-16-89
BILL NO. HB 700

TELEFAX MESSAGE

FROM TELEFAX # (406) 444-6721

TO: [redacted]

TELEFAX PHONE #: 2903

FROM: Mrin Danzer
Bobbie Balaz

NUMBER OF PAGES TO FOLLOW: 2

DATE: 3-13-89

SPECIAL INSTRUCTIONS:

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5 3 of 4
DATE 3-16-89
BILL NO. HB 700

DRAFT TESTIMONY
HOUSE BILL 700

Montana does have a veteran's preference law on the books. It begins on page 10, line 7 of House Bill 700 which you have in front of you. House Bill 700 would change that law by:

*Separating Veterans and Handicapped into two laws--two preferences

*Expanding the definition of a veteran and disabled veteran

*Providing a preference for veterans in case of a reduction in force (RIF)

We strongly support veteran's preference in hiring when it is used as it was intended--to help the returning veteran get a job since he or she had given up possible employment opportunities in order to serve their country in a time of need. Expanding the definition will diminish the preference for veteran's of wars, campaigns or conflicts. Someone who chose to join the military during peace time for the educational and other benefits will receive the same preference as those who joined or were drafted and served during times of conflict. All of the military advertisements promote the military as a place to get an education, experience and educational benefits. It would seem that during times of peace choosing to go into the military is choosing to take on a specific job. The military even offers new recruits contracts and if the military does not fulfill its end of the contract the recruit can obtain a honorable discharge.

We fail to see a need for the reduction in force clause in a preference bill. A hiring preference should be for initial hire only, being retained on the job should depend solely on qualifications and job performance. Especially now when we are faced with ever shrinking budgets it is imperative that the most qualified employees are retained if there is a reduction in force. Why would anyone see a need to treat reduction in force in any other way? No one is discriminated against and no one receives a preference, but everyone does receive an even chance. This is so straight forward. What are the veteran's concerned about?

We strongly urge a do not pass for House Bill 700. At the very least House Bill 700 must be amended to strike the reduction in force clause, therefore, we would like to propose an amendment to strike Section 5, page 8, lines 24 - 25 and page 9 lines 1 through 19.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 5 pg 4 of 4
DATE 3-16-89
BILL NO. HB 700

DRAFT

ICCW TESTIMONY PRESENTED TO THE SENATE
STATE ADMINISTRATION COMMITTEE
March 16, 1989

HB 700 - EMPLOYMENT PREFERENCE TO
VETERANS AND HANDICAPPED PERSONS

My name is _____. I represent the Interdepartmental Coordinating Committee for Women, known as ICCW. Our purpose is to identify policies and procedures in state government which directly or indirectly result in discrimination against women.

The ICCW opposes HB 700 because the bottom line ~~of the bill~~ is that it will discriminate against women. We recognize the contributions that veterans have made but this bill goes beyond the point of reasonableness and fairness. The current employment preference extended to veterans and handicapped persons is adequate and fair.

Because so many more men than women have served in the armed forces, women are disadvantaged by the provisions of the bill. It will result in fewer women being hired and promoted. More women will be terminated from employment during reductions-in-force.

We urge you to not pass this bill which would require the state and local governments to discriminate against women.

Thank you.

hb7002

MONTANA INDEPENDENT LIVING PROJECT

38 South Last Chance Gulch
Helena, Montana 59601

(406) 442-5755
Toll Free 1-800-233-0805 (VOICE/TDD)

EXHIBIT NO. 5A page 1 of 1
DATE 3/16/89
BILL NO. HB 700

March 16, 1989

Senate Labor Committee hearing on HB 700

I am Tim Harris and I work for the Montana Independent Living Project. I am here today to share some feelings about this bill. Somewhere at sometime this society arrived at the conclusion that we can indeed legislate against attitudes, change the minds and hearts of the people by changing the law. How can one legislate against fear, mistrust, hate, or anger? How can I get you to see me as an individual with abilities first, rather than a person with a disability? By being who I am, I guess. If who I am doesn't do the job I do not believe that any amount of legislation will do the job either. "It's ability, not disability, that counts." How often have you heard that phrase? It's the truth.

The idea of a veterans' preference separate from a disability preference has been through each of the last several sessions. It has been a cause of division between the veterans and the civilian disabled all that time. It has lead to non-productivity in other important areas, name calling, and mistrust on both sides. This is not in the best interests for either side. Why there are "sides" in the first place is a mystery. There is much to be done which requires cooperation on all our parts. Working together brings about much more advancement than working against ourselves.

I, for my part, am not in favor of preference of any kind. Any person hired or retained in any position should be the most qualified. Only when two or more applicants are "substantially equally qualified" should any preference be applied. I would not take a position given to me if I were not the most qualified. Working for someone who was forced to hire me does not make for good working environments. I believe my work record should speak for itself.

Finally, since it appears that there will be a preference, I feel that it should be equal in its treatment of veterans, disabled veterans and civilian disabled. There are some of us who were disabled due to diseases and injuries prior to age 18 and had no opportunity to join the armed services. I am one of those. I would have joined if given the chance.

Exhibit 6
HB 700

MONTANA
ASSOCIATION OF
COUNTIES

1802 11th Avenue
Helena, Montana 59601
(406) 442-5209

3-16-89

March 16, 1989

Sen. Gary Aklestad, Chairman
Senate Labor & Employment Committee

House Bill 700 - Establishing Separate Veterans Preference Law

MACo heartily supports the current language in our laws which define hiring preference guidelines for veterans and handicapped persons.

In 1983 we worked together with this legislative body to define a fair, workable veterans and handicapped persons preference law. We see no reason to undo all the hard work that was accomplished at that time.

The current law defines veterans as those persons who served on active duty during time of war or declared national emergency or a recognized campaign...and disabled veterans as those who suffer a 30 percent disability. These are the persons who now may claim initial hiring preference.

The proposed bill greatly broadens the Veterans Preference laws: it includes a broader definition of veterans and disabled veterans, broadens the eligible relatives to be given preference, includes temporary positions in the affected jobs, puts in place scored testing procedures, includes reductions in force in addition to initial hiring, and removes any time restrictions for application of the preference laws for either veterans or their eligible relatives.

This bill unfairly discriminates against persons who have not had the opportunity serve in the armed forces of the United States.

We ask that you retain current language, and not approve House Bill 700.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 7 page 1 of 4
DATE 3/16/89
BILL NO. HB 700

Senator Hoffman -

I had hoped to be able to deliver this relatively complicated message to you in person. I am sorry that I missed you but I know how busy you are.

I am concerned that the lay off/reduction in force language of HB 700, which you will be hearing tomorrow, is unconstitutional. As you know, the bill states that in cases of layoff or RIF's, the employer will lay off non-veterans and preserve the jobs of veterans.

I think this is unconstitutional based on the Supreme Court's 1986 decision in Wygant v. Jackson MI School Board. In this decision, the Court ruled that the school district could not lay off white workers to preserve the jobs of black teachers. They said that the burden of overcoming past discrimination fell too heavily on one group (white teachers) in order to benefit another group (black teachers. White teachers were an identifiable group who were directly and immediately harmed by the layoff

a finding of significant past discrimination by the employer would permit the school board or any employer to have such a lay off policy.

The Court found that:

1) Despite significant differences in the employment of black & white teachers, the school district had not proven pervasive past discrimination against blacks.

- public employers in Montana, for various reasons, cannot prove pervasive past discrimination against veterans.
  - we cannot do this because we do not know how many veterans have the qualifications to work at different jobs. This has been a long standing problem with the census & the veteran's Administration
  - If we can't prove past discrimination, a differential lay off policy will be unconstitutional.

2) Employment policies cannot immediately and directly harm one group of employees in order

- As I read this bill, it would do exactly that: harm non-veteran employees in order to benefit veteran employees.

3) Employment policies that take affirmative action for one group (blacks or veterans) must be carefully tailored to meet but not exceed the needs in a particular situation (In other words, giving preference to one group must be based on an analysis of the specific problems facing that group in the specific situations. Solutions to problems of discrimination must not be blanket or heavy handed
- This bill seems to be both blanket — in that it covers all state employment — and heavy handed — in that it is not adopted or enacted lightly to meet specific problems.

I think that if this same bill were written to say that blacks will be retained and whites layed off, everyone could see that this bill would be unfair and unconstitutional

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 7 page 4 of 4
DATE 3/16/89
BILL NO. HB 700

whom we all owe a debt of gratitude, we should not let our judgement be obscured. It is a bad bill; it will put Montana law in conflict with the Supreme Court's decision in a similar case, and it will unfairly harm non-veteran employees.

What is unconstitutional when applied to blacks, will be unconstitutional when applied to veterans.

Thank you for taking the time to read all this. I told you it was complicated.

Sincerely,

Corky Bush

S. This is my personal opinion based on my experience as an Affirmative Action Officer. This is not the official position of MSU on this bill.

"Corky"
Corlann Gee Bush
Director

406 Tetons

MSU
Montana State University
Human Resources/Affirmative Action
Bozeman, Montana 59717

Campus Phone: 406-994-2042

MONTANA WOMEN'S LOBBYIST FUND

P.O. Box 1099 Helena, MT 59624 406/449-7917

March 16, 1989

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 8 page 1 of 1
DATE 1-16-89
BILL NO. HB700

Testimony in Opposition to HB 700
Senate Labor Committee

Mr. Chairman and members of the Committee:

My name is Diane Sands and I am executive director of the Montana Womens Lobby. We represent over 8,000 individuals in Montana and we urge your opposition to HB 700. Opposing this bill is not voting against veterans. It is voting against a bad bill.

The Mt. Women's Lobby continues to support the current Veteran's and Handicapped Persons' Employment Preference Act. As many of you know and well remember, the preference issue was addressed by the 1983 special session . The resulting compromise law of 1983 was carefully engineered to give a FAIR preference while not discriminating against non-veterans.

Dept. of Administration has already pointed out the logistical and financial problems that this bill creates, as well as the significant changes of definition as to who is entitled to preference. I would like to point out some other ramifications of the bill that especially concern the Montana Women's Lobby.

Since 96% of Montana vets are men, women would clearly be at a disadvantage in seeking employment and maintaining employment in lay-offs. Women in the Montana workforce earn 50.5¢ for every dollar a man earns and in state government women earn 77¢(1986) for every dollar a full-time male employee earns. Clearly women are already at a disadvantage in the state workforce. Additional preference for veterans does not acknowledge the need for the state to use public policy to balance the justifiable needs for employment preference by several disadvantaged populations: women, handicapped, minorities and veterans.

Finally, what is the problem that is being fixed with this bill? The current system works. Vets are being hired at a rate better than their representation in the population. A 1987 survey of veterans in state government showed veterans to be 24.3% of the Civilian Labor Force in Montana (1980 census) and veterans represent 27.6% of the non-clerical jobs in state government. Vietnam Veterans are 7% of the Civilian Labor Force (1980 census) and are 11.4% of the non-clerical jobs in state government. We fail to see what the problem is with the current law--It works!--and why we keep spending so much time and money on this issue.

All we ask is that you consider what is truly fair to all Montanans, whether they be veteran or non-veteran, disabled or able-bodied, minority or majority, male or female. Current law has been put together to acknowledge and balance all of these legitimate needs and interests. We urge you to support the existing preference law and to give HB700 a "do not pass" recommendation.

MEMORANDUM

From the Office of
The City Commission
Bozeman, Montana

Date 3/11/89

Dear Members of the Senate Labor Committee,

I ask you to please vote against HB 700, the veterans' preference bill regarding reductions in force.

This is a bad bill: (1) it discriminates against women who are under-represented as veterans; (2) it forces governments and universities to keep on people who may not be the best qualified -- and government -- especially local governments, living under too many budget constraints -- need the best people they can possibly hire and retain; (3) the people who most need jobs, that is single parents, usually women, could be laid off in preference to someone who doesn't need the job nearly as badly; (4) veterans already receive many benefits which other people, including women, do not receive; it's not as though they are benefit-poor now; (5) it's "professional veterans" -- ones who have a vested interest in proving that their organizations are strong in pushing veterans' benefits -- who push this kind of legislation, while the truly deserving veterans, including the many who died, would be the last to push aside those who truly need jobs or are most competent.

Please vote against HB 700. Thank you.

Sincerely,

Mary Vant Hull

Mary Vant Hull
City Commissioner
416 E. Story
Bozeman 59715
587-8569

EXHIBIT 9
DATE 3/16/89
BILL NO. HB 700

MISSOULA COUNTY

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 9a page 1 of 1
DATE 3/16/89
BILL NO. HB 700

HB 700 Comments on Proposed Legislation

John Pemberton, Director
Personnel & Labor Relations
Missoula County

We see a number of problems raised by this bill, that impacts public employers at all levels, State, County, City, Schools, Colleges, Universities, & etc.

Areas of concern include:

1. This bill will have a negative impact on public employers efforts through Affirmative Action plans to provide employment opportunities for women and Handicapped persons at all levels of public employment.

This is particularly true in traditionally male dominated occupations such as Sheriffs Deputies, Police, Correctional Officers, Jailers, Firefighters, known as protective services. These positions are typically filled on the basis of scored selection instruments, thus this bill will give the veteran a 5 to 10 % advantage.
Obviously, because the vast majority of Vets are male, the effect of this bill will be to negate a long term commitment to achieve a proportionate balance of men and women in the work force.

2. This bill expands the current Vets preference to include, not only initial appointment, but also promotions, & R.I.F.
We do not disagree with a Vets preference to initial hire ,as in the current law, however we believe in the ares of promotion and R.I.F., that these decisions need to be based upon job performance,merit and the ability to meet business necessity.

3. This bill expands the Vets preference from the current combat & decorated vet to essentially all Vets, those with only 180 days service and less than a full "honorable discharge".

4. This bill expands the vets preference to numerous relatives including mothers, spouses, and widows of fathers of Vets.

5. This bill eliminates the current 30% disability requirement and opens it to any disability,no matter how slight.

6. This bill imposes additional burdens of administration responsibilities on public employers including documentation, notice, written explanation to applicants and exposure to liability of lawsuit.

~~For these reasons I urge you to defeat or amend this bill.~~

HB 700

3-16-89

March 15, 1989

Dear Members of the Senate Labor Committee:

I request that you vote against HB 700, the veterans' preference bill regarding reductions in work force.

This is a bad bill. It is hard to even argue against it on its merits, because of its underlying blatant discrimination against women: 1) it discriminates against women, in that women are under-represented as veterans; 2) it discriminates against women in that they are the largest majority of single parents, who are most in need of jobs, and they could be laid off in preference to someone who doesn't need the job nearly as badly; 3) most working women are already earning less than men, and to give men yet this additional advantage is clearly disciminatory.

4) The bill would also put the universities in a situation directly opposed to their well-being: it is to their, and to the State of Montana's, well-being to maintain as high a quality of staff as possible; and yet, in the event of reductions in work force, the lesser competent person would be allowed to stay, while the more competent would be laid off.

5) Surely, in the long run, such as situation would not serve to increase the self-esteem of those retained, when they would always have the gnawing doubt that perhaps they were not so highly regarded by their peers because of having retained their jobs due to a technicality of law rather than on their own individual merits.

6) I have some question as to whether this bill is even constitutional, in that the Montana constitution provides for equal dignity, and to retain employment on any other groupds than capability to do the job is an offense to personal dignity.

Please vote against HB 700. Thank you.

Sincerely,

Eugenia Grayson Powell

Eugenia Grayson Powell
Real Estate Mgr.
209 S. Bozeman Ave.
Bozeman 59715
587-5510

LABOR COMMITTEE

VISITORS' REGISTER

51st LEGISLATIVE SESSION

DATE: March 16, 1989 #100

LEAVE PREPARED STATEMENTS WITH SECRETARY! PLEASE!!!

PRINT: NAME	REPRESENTING	Check One: Support	Check One: Oppose
Connie Cole	ICCW / Capitol Station Hmn		X
John E Sloan	M.O.D.H.	X	
Walt Wheeling	Ex-POW's + ADBC	X	
Tim Harris	Mont. Independent Living Project Helena	?	
Dick Baumberger	DAV	X	
Hal Manson	American Legion	X	
Larry Longfellow	VFW	X	
George Poston	United Veterans Com. of MT	X	
John R. Morgan	DAV - Helena	X	
John M. Dee Herder	Dept of MT DAV	X	
Joann Changer	St. Personnel Div. DOA		X
Lyn O'Neil	Self		X
Bob Anderson	MSBA		X
Rich Brown	MT Vet Affairs	X	
Dian Sands	Mt - Women Lobby		X
Joe Brand	self	X	
Beverly Gibson	MACo		X
Donald W Wright	Self	X	
Dan Antonietti	VETS - USDL	X	
Bob Gervais	Rep N.D. 9	X	
Carl O. Rice	Self	X	

HB # 700 — Testifying Witnesses
Senate Labor Committee
— Proponents —

	Name	Address	Post #
1	Joe Brand	812 Saddle drive Helena, Mont. 59601	VFW 689
2	John E Sloan	223 So. Main Helena Brown Bldg	Mont. 300 Post 12
3	Pat Gervais	Capitol Station	A.D.G
4	Dan Antonietti	PO Box 1728 - Helena	USDL-V
5	Hal Manson	1309 Hidden Rd. Helena	#2-AMVETS
6	[illegible] Melin	620 Modern Helena	VFW
7	George Poston	P.O. Box 4355 Helena	U.V.C. Ex-Pow
8	Walt Wheeling	1120 Billings Ave, Helena	ADBC
9	Larry Longfellow	Box 6228 Helena	Dept. of MT. VA
10	Andy Gruel	1823 Broadway Helena	Ltc #3
11	John DeVerder	3333 Canyon Ferry Rd Helena	DAV Retired
12	Dick Baumberger	5495 N. Mont. Ave.	DAV
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HB 700 — Testifying Witnesses
Senate Labor Committee
~ Opponents ~

	Name	Address	Post #
28	Laurie Ekanger	DOA 136 Mitchell Bldg	
29	Jerry H. Schramm	33 S. Last Chance	
30	Jim NYS	Box 5 Clancy	None
31	Connie Cole	ICCW (Dept of State Lands) Capitol Station	
32	Bob Anderson	MSBA #1 So. Mt. Ave, Helena	
33	Beverly Gibson	Mt Assoc. Counties	
34	Tim Harris	MT. INDEPENDENT LIVING PROJECT 38 S. LAST CHANCE, HELENA	
35	Dan Sands	Mt. Women's Lobby PO Box 1099 Helena 59624	
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MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS

Call to Order: By Senator Gary C. Aklestad, on March 21, 1989, at 1:00 p.m. in room 415 of in the state Capitol.

ROLL CALL

Members Present: All members were present. Senator Tom Keating, Vice Chairman, Senator Sam Hofman, Senator J. D. Lynch, Senator Gerry Devlin, Senator Bob Pipinich, Senator Dennis Nathe, Senator Richard Manning, Senator Chet Blaylock and Senator Gary C. Aklestad, Chairman.

Members Excused: There were no members excused.

Members Absent: There were no members absent.

Staff Present: Tom Gomez, Legislative Council Analyst.

Announcements/Discussion: There were no announcements or discussion.

HEARING ON HOUSE BILL 28

Presentation and Opening Statement by Sponsor:

Representative Dan Harrington, House District No. 68, chief sponsor, stated the legislation is an act to increase the minimum hourly wage and to increase the minimum monthly wage for farm workers. Representative Harrington stated HB 28 is long over due. Some of the problems facing Montana are attributed to the $3.35 minimum wage. The wage should be raised. The federal government's minimum wage may reach $4.65. The legislation is currently before Congress. Representative Harrington feels Montana must also move in the direction of a higher minimum wage. The federal mandated minimum wage was first implemented in the United States in 1938 with the passage of the Fair Labor Standards Act. The proponents argued at that time the mandatory minimum wage of $.25 per hour would cause unemployment to increase. The same story may be presented today. The cost of living will go up, and unemployment will also go up. Nationally, 6.7 million workers currently earn the minimum wage. Montana runs close to the average. Only 14%

legislature concurrence concerning how the private industry council will develop performance standards. The standards are required in section 7 and 8 of the bill. The bill passed out of the House with the statement of intent contained in the bill. Senator Lynch said the statement of intent can not be attached by the legislative council.

Senator Keating questioned the amendments proposed, asking if they are proper. Yes. Senator Lynch stated he felt the committee should go to the Rules Committee. Senator Aklestad stated the committee will handle the bill with the provision that the statement of intent is on the bill, as is. The bill can be amended at this time by a simple majority.

Senator Lynch asked about the amendment of page 3, line nine. The amendment does not read very well. A follow-up is mentioned twice. Gomez stated the intent is to have a follow-up six months after the follow-up, which is required in the Federal Performance Standards' thirteen week follow-up. The reason for the subsequent follow up is to determine whether or not people are being retained in employment on a long term basis. Thus, necessitating the call for a second follow-up. The provision needs to be included, and the sponsor, Boharski, requested the amendment.

Senator Aklestad asked how the follow-up pin points the individual. Will social security numbers be used. Gomez stated the follow-up will be based on whatever methods the private industry councils determines best. Senator Hofman agreed the amendment is not written well.

Recommendation and Vote:

Senator Lynch made a substitute motion to lay HB 529 on the table. Senator Lynch stated the governor has been given the authority to review legislation. The bill only adds confusion to the process. A roll call vote was taken. The motion passed. Senators Lynch, Pipinich, Nathe, Manning, and Blaylock voted YES. Senators Keating, Hofman, Devlin and Aklestad voted NO.

DISPOSITION OF HOUSE BILL 700

Amendments and Votes:

Senator Lynch moved to amend HB 700 by adding a severability clause. Senator Keating asked why the severability clause was not included in the first place. Senator Lynch stated severability protects integrity. The motion carried unanimously.

Senator Blaylock stated he was prepared to offer amendment to limit

the bill to combat veterans, but he was present with another amendment, which leaves the act pretty much as it is. The amendment extends the present law for another ten years so those veteran who served during war time can have an extension. The amendment will not include all the people who are presently serving in the armed forces. Those, who were exempt, will stay exempt. Page 16, section 1 will be amended to read: The duration of the preference is subject to 39-32-02, and it defines a handicapped person. The main thrust of the bill is add ten more years.

Senator Keating asked if the soldiers seeing current action, such as Iran, will be covered. No.

Senator Lynch stated he would support the veteran bill without amendments. The changes in the law are not absolute. Today, the service jobs are prime jobs. The jobs are advertized, and the soldiers are able to obtain $10,000 to $12,000 per year towards college education. After discharge, the veteran has a full college ride, skills learned in the service, and every opportunity to gain new skills. Senator Blaylock stated the amendment is reasonable.

Senator Pipinich wondered how many body bags have been brought back to the United States. It is a staggering number. Any military person going overseas, the way the world is, takes their life in their own hands. We must support the people who are supporting us. Senator Pipinich stated he will vote for HB 28 without amendment.

Senator Aklestad asked Senator Blaylock if he would be willing to amend the bill to include Grenada veterans and others who have seen recent action. Senator Blaylock stated he would be willing to include Grenada, Lebanon, and any other pertinent area.

Senator Keating asked Mr. Strand to comment. The present law covers people who have been involved in recent action, such as Vietnam veterans and those who obtained campaign ribbons. The armed services designates areas. These areas are covered.

Mr. Antonietti stated the mayor of Miles City lost his boy a year and one half ago. Mr. Grutkowski, a young man who served his country didn't get into combat or the Persian Gulf, but lost his life on a training mission. He was one of many, and he is not covered. Those who serve and are on training missions, protective dispatch, are there to protect the United States and keep us out of war. HB 700 includes this situation.

A roll call vote was taken. Senators Hofman, Blaylock and Aklestad voted YES. Senators Keating Lynch, Devlin, Pipinich, Nathe, Manning voted NO.

Recommendation and Vote:

Senator Lynch moved BE CONCURRED IN AS AMENDED. A roll call voted was taken. Senators Keating, Lynch, Devlin, Pipinich, Nathe, and Manning voted YES. Senators Hofman, Blaylock, and Aklestad voted NO.

DISPOSITION OF HOUSE BILL 710

Amendments and Votes:

Senator Blaylock stated the amendment moves item C to item G. The motion passed, with Senator Aklestad voting NO.

Recommendation and Vote:

Senator Manning moved BE CONCURRED IN AS AMENDED. The amendment will take the bill back to what the bill was before. (Senate bill 315 of Last Session)

Senator Manning withdrew the motion.

Senator Lynch stated Senator Blaylock effectively amended the bill. It is only right to give Senator Blaylock's amendment a fair consideration with the present law. Senator Lynch suggested someone who will be against the law should offered language on page two. Senator Lynch stated he did not want to lose the bill, and suggested the opposition should consider the suggested language. The people are concerned about the new language, and are concerned about what the individual is capable of earning. Senator Keating stated the language must come out in several area, including the title. Option C was the main problem of getting people back to work in a place that was identifiable to their skills, etc. The integrity of the bill is intact.

Senator Aklestad stated he does not want the committee to be misled. The amendment changes the bill. Senator Keating stated, in talking with the private carriers, the indication is in many cases, the private carriers do not stop at C, but even go, in some cases, into long-term retraining programs. On the job training is also common. If the temptation is to stop at C on some, particularly on the bureau and not in the private sector, then, in all fairness, it may work better to make this change and allow the other options to occur first before getting to C. In this manner, rehabilitation may be improved. In practice, the privates are doing this anyway. They are going to D and E in come cases.

ROLL CALL

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE: March 21, 1989

	PRESENT	ABSENT	EXCUSED
SENATOR TOM KEATING	X		
SENATOR SAM HOFMAN	X		
SENATOR J.D. LYNCH	X		
SENATOR GERRY DEVLIN	X		
SENATOR BOB PIPINICH	X		
SENATOR DENNIS NATHE	X		
SENATOR RICHARD MANNING	X		
SENATOR CHET BLAYLOCK	X		
SENATOR GARY AKLESTAD	X		

ROLL CALL VOTE

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE: April 21, 1989 BILL NO: HB 700 TIME: _____

HB 700, as amended

VOTE:	YES	NO
SENATOR TOM KEATING		X
SENATOR SAM HOFMAN	X	
SENATOR J.D. LYNCH		X
SENATOR GERRY DEVLIN		X
SENATOR BOB PIPINICH		X
SENATOR DENNIS NATHE		X
SENATOR RICHARD MANNING		X
SENATOR CHET BLAYLOCK	X	
SENATOR GARY AKLESTAD	X	
Motion Fails	3	6

ROLL CALL VOTE

LABOR COMMITTEE

51st LEGISLATIVE SESSION

DATE: 3/21/89 BILL NO: HB 700 TIME: _____

BE Concurred In as amended

VOTE:	YES	NO
SENATOR TOM KEATING	X	
SENATOR SAM HOFMAN		X
SENATOR J.D. LYNCH	X	
SENATOR GERRY DEVLIN	X	
SENATOR BOB PIPINICH	X	
SENATOR DENNIS NATHE	X	
SENATOR RICHARD MANNING	X	
SENATOR CHET BLAYLOCK		X
SENATOR GARY AKLESTAD		X
Motion Passes	6	3

SENATE STANDING COMMITTEE REPORT

March 23, 1989

MR. PRESIDENT:

We, your committee on Labor and Employment Relations, having had under consideration HB 700 (third reading copy -- blue), respectfully report that HB 700 be amended and as so amended be concurred in:

Sponsor: Pavlovich (Nathe)

1. Page 22.
Following: line 3
Insert: "NEW SECTION. **Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

AND AS AMENDED BE CONCURRED IN

Signed: _____
Gary C. Aklestad, Chairman

Statement of Intent adopted.

SENATE
HB 700

HOUSE BILL NO. 700

INTRODUCED BY PAVLOVICH, MANNING, VAUGHN, STIMATZ, LEE, ELLISON, CAMPBELL, PATTERSON, TVEIT, LYNCH, DEVLIN, NATHE, WILLIAMS, JOHNSON, HAYNE, DRISCOLL, O'CONNELL, QUILICI, MCCORMICK, THOMAS, SWIFT, BLOTKAMP, DAILY, MENAHAN, GLASER, SWYSGOOD, NISBET, HARRINGTON, PHILLIPS, HANNAH, GIACOMETTO

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING AN EMPLOYMENT PREFERENCE TO CERTAIN MILITARY VETERANS AND THEIR ELIGIBLE RELATIVES IN ~~APPOINTMENT~~ INITIAL HIRING TO CERTAIN POSITIONS AND IN RETENTION DURING REDUCTIONS IN FORCE; ELIMINATING THE EMPLOYMENT PREFERENCE PROVIDED TO VETERANS AND THEIR ELIGIBLE SPOUSES UNDER THE MONTANA VETERANS' AND HANDICAPPED PERSONS' EMPLOYMENT PREFERENCE ACT; AND AMENDING SECTIONS 10-2-402, 39-30-101 THROUGH 39-30-103, 39-30-201 THROUGH 39-30-203, 39-30-207, 49-2-405, AND 49-3-103, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6] requires the department of administration to adopt rules to implement [sections 1 through 5]. The legislature intends the rules to adequately provide for the administration of the point preference provided for in [section 2] and the retention preference provided for in [section 5], but to include only those rules that are reasonably necessary.

It is the desire of the legislature that the department take all necessary steps in formulating, proposing, and adopting rules to ensure that the public, particularly those persons and organizations that have shown past interest in the employment preference law, is afforded sufficient time and opportunity to participate in the rulemaking procedure. The department should give ample notice and hold necessary hearings to ensure adequate public participation.

Rules adopted by the department apply to both state and local government employers. In formulating its rules, the department should take this into consideration and adopt rules that can be used and applied by the broad spectrum of public employers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Definitions. For the purposes of [sections 1 through 6], the following definitions apply:

(1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except for training, determining physical fitness, or service in the reserve or national guard.

(2) "Armed forces" means the United States:

(a) army, navy, air force, marine corps, and coast

guard; and

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the veterans administration.

(3) "Disabled veteran" means a person:

(a) whether or not he is a veteran as defined in this section, who was separated under honorable conditions from active duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a law administered by the veterans administration or a military department; or

(b) who has received a purple heart medal.

(4) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who lost his life under honorable conditions while serving in the armed forces if:

(i) her husband is totally and permanently disabled; or

(ii) she is the widow of the father of the veteran and has not remarried;

(d) the mother of a service-connected permanently and totally disabled veteran if:

(i) her husband is totally and permanently disabled; or

(ii) she is the widow of the father of the veteran and has not remarried.

(5) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a state position or a similar permanent, temporary, or seasonal position with a public employer other than the state. The term does not include:

(a) a state or local elected office;

(b) appointment by an elected official to a body such as a board, commission, committee, or council;

(c) appointment by an elected official to a public office if the appointment is provided for by law;

(d) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(e) engagement as an independent contractor or employment by an independent contractor.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive,

legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system or a vocational-technical center;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that result in a numerical score to which percentage points may be added.

(8) "Under honorable conditions" means a discharge or separation from active duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges but does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who was separated under honorable conditions from active duty in the armed forces after having served more than 180 consecutive days, other than for training.

NEW SECTION. **Section 2.** Point preference IN INITIAL HIRING for certain applicants. (1) Subject to the restrictions in subsections (2) and (3), whenever a public employer uses a scored procedure, an applicant for

~~appointment to a position~~ AN INITIAL HIRING, AS DEFINED IN 39-30-103, must have added to his score the following percentage points of the total possible points that may be granted in the scored procedure:

(a) 5 percentage points if the applicant is a veteran; and

(b) 10 percentage points if the applicant is a disabled veteran or an eligible relative.

(2) A veteran, disabled veteran, or eligible relative may not receive the percentage points provided for in subsection (1) unless the person:

(a) is a United States citizen; and

(b) received 70 or more percentage points of the total possible points that may be granted in the scored procedure.

(3) A disabled veteran who receives 10 percentage points under subsection (1)(b) may not receive an additional 5 percentage points under subsection (1)(a).

NEW SECTION. **Section 3.** Notice and claim of preference. (1) A public employer shall, by posting or on the application form, give notice of the point preference provided in [section 2].

(2) A job applicant who believes he is eligible to receive a point preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely

preference claim for a position is a complete defense to an action instituted by an applicant under [section 4] with regard to that position.

(3) If an applicant for a position makes a timely written preference claim, the public employer shall give written notice of its hiring decision to the applicant claiming preference.

NEW SECTION. **Section 4.** Enforcement of preference. (1) An applicant who believes he is entitled to but has not been given the point preference provided in [section 2] may, within 30 days of receipt of the notice of the hiring decision provided for in [section 3], submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) After following the procedure described in subsection (1), the applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts that on their face entitle the applicant to a point preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified

time not less than 5 or more than 10 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer applied the points under [section 2] and made a reasonable hiring decision. The applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference eligible applicant, the court shall order the public employer to comply with the provisions of [section 2]. In addition, the court shall, upon proper proof, grant an award of backpay, reasonable attorney fees, and costs.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to

comply with the provisions of [section 2].

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section.

NEW SECTION. **Section 5.** **Retention during reduction in force.** (1) Subject to the restriction in subsections (2) and (3), during a reduction in force, a public employer shall retain in a position:

(a) a veteran, disabled veteran, or eligible relative whose performance has not been rated unacceptable under a performance appraisal system over other employees with similar job duties and qualifications and same length of service; and

(b) a disabled veteran with a service-connected disability of 30% or more whose performance has not been rated unacceptable under a performance appraisal system over other veterans, disabled veterans, and eligible relatives with similar job duties and qualifications and same length of service.

(2) An employee is not entitled to preference in retention under subsection (1) unless he is a United States citizen.

(3) The preference in retention under subsection (1) does not apply to a position covered by a collective bargaining agreement.

NEW SECTION. **Section 6.** **Adoption of rules.** The department of administration shall adopt rules implementing [sections 1 through 5]. The department's rules apply to all local and state public employers.

Section 7. Section 10-2-402, MCA, is amended to read:

"**10-2-402. Superintendent to be given veterans' preference.** In the selection of the superintendent of the Montana veterans' home, the department of institutions shall apply the preference granted to veterans and disabled veterans under [section 2], but not the preference granted to other persons~~,~~ ~~by~~ under [section 2] or Title 39, chapter 30."

Section 8. Section 39-30-101, MCA, is amended to read:

"**39-30-101. Short title.** This chapter may be cited as the "Montana ~~Veterans'~~ and Handicapped Persons' Employment Preference Act"."

Section 9. Section 39-30-102, MCA, is amended to read:

"**39-30-102. Purposes.** The purposes of this chapter are to ~~recognize--veterans-and-disabled-veterans-for-service-to their--country~~, recognize past employment discrimination against handicapped persons, and facilitate the habilitation, rehabilitation, and readjustment of ~~veterans, disabled-veterans, and~~ handicapped persons."

Section 10. Section 39-30-103, MCA, is amended to read:

"39-30-103. Definitions. For the purposes of this chapter, the following definitions apply:

~~(1)--"Active--duty"-means-full-time-duty-other-than-for training-in-the-regular--components--of--the--United--States army,--air--force,--navy,--marine-corps,-or-coast-guard-with full-pay-and-allowances.-The-term-does-not--include--monthly drills,--summer--encampments,--initial--training,--or--other inactive-or-active-duty-for-training-in-the--national--guard or-reserves.~~

~~(2)--"Disabled-veteran"-means-an-individual,-whether-or not-he-is-a-veteran-as-defined-in-this-section,-who:~~

~~(a)--served-on-active-duty;~~

~~(b)--has--been--separated--from--service--by--honorable discharge;-and~~

~~(c)--suffers-a-service-connected-disability--determined by--the--United--States-veterans-administration-to-be-30%-or more-disabling.~~

~~(3)~~(1) "Eligible spouse" means:

~~(a)--the-unremarried-surviving-spouse-of-a-veteran--who died--while--on--active--duty-or-whose-death-resulted-from-a service-connected-disability;-or~~

~~(b)~~ the spouse of:

~~(i)--a-disabled-veteran-determined-by-the-United-States veterans-administration-to--have--a--100%--service-connected disability--who--is--unable-to-use-his-employment-preference because-of-his-disability;~~

~~(ii)-a-person-on-active-duty-determined-by--the--United States--government--to-be-missing-in-action-or-a-prisoner-of war;-or~~

~~(iii)~~ a handicapped person determined by the department of social and rehabilitation services to have a 100% disability who is unable to use his employment preference because of his disability.

~~(4)~~(2) "Handicapped person" means an individual certified by the department of social and rehabilitation services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and ~~which~~ that limits the individual's ability to obtain, retain, or advance in employment.

~~(5)~~(3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the legislative branch;

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(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection ~~(5)~~ (3), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection ~~(5)~~ (3), or current participants in a federally authorized employment program is not an initial hiring.

~~(6)~~(4) (a) "Mental impairment" means:

(i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

~~(7)~~(5) "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position or a similar permanent or seasonal position with a public employer other than the state. However, the term does not include:

(a) a temporary position as defined in 2-18-101 for a state position or similar temporary position with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

~~(8)~~(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical center or program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

~~(9)~~(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

~~(10) (a) "Veteran" means a person who:~~

~~(i) served on active duty during time of war or declared national emergency or in a campaign or expedition for which a campaign badge was authorized by the United States congress or the United States department of defense;~~

~~and~~

~~(ii) has been separated from service by honorable discharge;~~

~~(b) The term does not include a retired member of the United States armed forces who is eligible for or receiving a military retirement allowance based on length of service and does not include any other retired member of a public retirement system, except social security, that is supported in whole or in part by tax revenues;~~

~~(11) "War or declared national emergency" means:~~

~~(a) World War I, beginning on April 6, 1917, and ending on November 11, 1918, both dates inclusive;~~

~~(b) World War II, beginning on December 7, 1941, and ending on December 31, 1946, both dates inclusive;~~

~~(c) the Korean conflict, military expedition, or police action, beginning on June 27, 1950, and ending on January 31, 1955, both dates inclusive; and~~

~~(d) the Vietnam conflict, beginning on August 5, 1964, and ending on May 7, 1975, both dates inclusive.~~"

Section 11. Section 39-30-201, MCA, is amended to read:

"39-30-201. Employment preference in initial hiring. (1) (a) Except as provided in 10-2-402, in an initial hiring for a position, if a job applicant who is a veteran, disabled veteran, handicapped person, or eligible spouse

meets the eligibility requirements contained in 39-30-202 and claims a preference as required by 39-30-206, a public employer shall hire the applicant over any other applicant with substantially equal qualifications who is not a preference eligible applicant.

(b) In an initial hiring, a public employer shall hire a ~~disabled--veteran--or~~ handicapped person over any other preference eligible applicant with substantially equal qualifications.

(2) The employment preference provided for in subsection (1) does not apply to a personnel action described in ~~subsection-(5)(b)-of~~ 39-30-103(3)(b) or to any other personnel action that is not an initial hiring."

Section 12. Section 39-30-202, MCA, is amended to read:

"**39-30-202. Eligibility requirements.** ~~No--veteran,-disabled-veteran,~~ An eligible spouse, or handicapped person is not entitled to receive employment preference as provided in 39-30-201 unless:

(1) he is a United States citizen;

(2) he has resided continuously in the state for at least 1 year immediately before applying for employment;

(3) if applying for municipal or county employment, he has resided for at least 30 days immediately before applying for employment in the city, town, or county in which

employment is sought; and

(4) he meets those requirements considered necessary by a public employer to successfully perform the essential duties of the position for which he is applying."

Section 13. Section 39-30-203, MCA, is amended to read:

"**39-30-203. Duration of preference.** Subject to 39-30-202:

~~(1)~~ a handicapped person, ~~the~~ or eligible spouse ~~of-a-handicapped-person-as-described-in-subsection-(3)(b)(iii)-of-39-30-103,-a-disabled-veteran,-or-the-spouse-of--a--disabled-veteran--as--described--in-subsection-(3)(b)(i)-of-39-30-103~~ qualifies for employment preference as long as the disabling condition exists.

~~(2)--a-veteran,-as-defined-in-39-30-103,-who-is--not--a-disabled--veteran,--as--defined--in-39-30-103,-qualifies-for-employment-preference-for-no-longer-than-15-years--following-separation--from--service--or--for--no--longer--than-5-years-following-December-20,-1983,-whichever-is-later;~~

~~(3)--the-surviving-spouse-of-a-veteran-as-described--in-subsection--(3)(a)--of--39-30-103--qualifies--for-employment-preference-for-as-long-as-the-spouse-remains-unmarried;--and~~

~~(4)--the--spouse--of--a--person-described-in-subsection-(3)(b)(ii)-of-39-30-103-qualifies-for-employment--preference-for-as-long-as-the-person-is-missing-in-action-or-a-prisoner~~

~~of war.~~"

Section 14. Section 39-30-207, MCA, is amended to read:

"**39-30-207. Enforcement of preference.** (1) An applicant who believes he has not been accorded his rights under this chapter may, within 30 days of receipt of the notice of the hiring decision provided for in 39-30-206, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) The applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts ~~which~~ that on their face entitle the applicant to an employment preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 10 or more than 30 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination pursuant to ~~subsection (9) of~~ 39-30-103(7), and the applicant has the

burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court ~~has found~~ finds that the applicant is a preference eligible applicant, the court shall order the public employer to reopen the selection process for the position involved and shall grant the applicant reasonable attorney fees and court costs. The remedy provided by this section is the only remedy for a violation of this chapter, and a court may not grant any other relief in an action for violation of this chapter.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to reopen the selection process.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section."

Section 15. Section 49-2-405, MCA, is amended to read:

"**49-2-405. Veterans' and handicapped persons' employment preference.** The application of an employment preference as provided for in [sections 1 through 6], Title 39, chapter 30, and 10-2-402 by a public employer as defined in [section 1] and 39-30-103 may not be construed to constitute a violation of this chapter."

Section 16. Section 49-3-103, MCA, is amended to read:

"**49-3-103. Permitted distinctions.** (1) Nothing in this chapter ~~shall--prohibit~~ prohibits any public or private employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, ~~which~~ that is not a subterfuge to evade the purposes of this chapter, except that ~~no--such~~ an employee benefit plan ~~shall~~ may not excuse the failure to hire any individual; or

(c) from discharging or otherwise disciplining an individual for good cause.

(2) The application of an employment preference as provided for in [sections 1 through 6], Title 39, chapter 30, and 10-2-402 by a public employer as defined in [section 1] and 39-30-103 may not be construed to constitute a violation of this chapter."

NEW SECTION. **Section 17.** Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **SECTION 18.** SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

-End-

Conference Committee
on HOUSE BILL 700
Report No. 1, April 6, 1989

Mr. Speaker:

We, your Conference Committee on HOUSE BILL 700 met and considered:

House Bill 700 (reference copy -- salmon) in its entirety.

We recommend that HOUSE BILL 700 (reference copy -- salmon) be amended as follows:

Accept the Senate amendments (pink sheet) to House Bill 700.

And that this Conference Committee Report be adopted.

For the House:

Rep. Bob Pavlovich, Chairman

Rep. Dorothy Bradley

Rep. John Mercer

For the Senate:

Sen. Larry Tveit, Chairman

Sen. Harry McLane

Sen. Chet Blaylock

ADOPT

REJECT

HB 700

GOVERNOR'S AMENDMENTS
TO HOUSE BILL 700
REFERENCE COPY (AS AMENDED)
April 20, 1989

1. Title, line 17.
Following: "MCA"
Insert: "AND PROVIDING FOR A TERMINATION DATE"

2. Page 22
Following line 15
Insert: "NEW SECTION. **Section 19.** Termination date.
[This Act] terminates on July 1, 1991."

-END-

HOUSE BILL NO. 700

INTRODUCED BY PAVLOVICH, MANNING, VAUGHN, STIMATZ, LEE, ELLISON, CAMPBELL, PATTERSON, TVEIT, LYNCH, DEVLIN, NATHE, WILLIAMS, JOHNSON, HAYNE, DRISCOLL, O'CONNELL, QUILICI, MCCORMICK, THOMAS, SWIFT, BLOTKAMP, DAILY, MENAHAN, GLASER, SWYSGOOD, NISBET, HARRINGTON, PHILLIPS, HANNAH, GIACOMETTO

A BILL FOR AN ACT ENTITLED: "AN ACT GRANTING AN EMPLOYMENT PREFERENCE TO CERTAIN MILITARY VETERANS AND THEIR ELIGIBLE RELATIVES IN ~~APPOINTMENT~~ INITIAL HIRING TO CERTAIN POSITIONS AND IN RETENTION DURING REDUCTIONS IN FORCE; ELIMINATING THE EMPLOYMENT PREFERENCE PROVIDED TO VETERANS AND THEIR ELIGIBLE SPOUSES UNDER THE MONTANA VETERANS' AND HANDICAPPED PERSONS' EMPLOYMENT PREFERENCE ACT; ~~AND~~ AMENDING SECTIONS 10-2-402, 39-30-101 THROUGH 39-30-103, 39-30-201 THROUGH 39-30-203, 39-30-207, 49-2-405, AND 49-3-103, MCA; AND PROVIDING A TERMINATION DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6] requires the department of administration to adopt rules to implement [sections 1 through 5]. The legislature intends the rules to adequately provide for the administration of the point preference provided for in [section 2] and the retention preference provided for in [section 5], but to include only those rules that are reasonably necessary.

It is the desire of the legislature that the department take all necessary steps in formulating, proposing, and adopting rules to ensure that the public, particularly those persons and organizations that have shown past interest in the employment preference law, is afforded sufficient time and opportunity to participate in the rulemaking procedure. The department should give ample notice and hold necessary hearings to ensure adequate public participation.

Rules adopted by the department apply to both state and local government employers. In formulating its rules, the department should take this into consideration and adopt rules that can be used and applied by the broad spectrum of public employers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** Definitions. For the purposes of [sections 1 through 6], the following definitions apply:

(1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except for training, determining physical fitness, or service in the reserve or national guard.

(2) "Armed forces" means the United States:

REFERENCE BILL: INCLUDES GOVERNOR'S AMENDMENTS DATED 4-20-89

(a) army, navy, air force, marine corps, and coast guard; and

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the veterans administration.

(3) "Disabled veteran" means a person:

(a) whether or not he is a veteran as defined in this section, who was separated under honorable conditions from active duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a law administered by the veterans administration or a military department; or

(b) who has received a purple heart medal.

(4) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who lost his life under honorable conditions while serving in the armed forces if:

(i) her husband is totally and permanently disabled; or

(ii) she is the widow of the father of the veteran and

has not remarried;

(d) the mother of a service-connected permanently and totally disabled veteran if:

(i) her husband is totally and permanently disabled; or

(ii) she is the widow of the father of the veteran and has not remarried.

(5) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a state position or a similar permanent, temporary, or seasonal position with a public employer other than the state. The term does not include:

(a) a state or local elected office;

(b) appointment by an elected official to a body such as a board, commission, committee, or council;

(c) appointment by an elected official to a public office if the appointment is provided for by law;

(d) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(e) engagement as an independent contractor or employment by an independent contractor.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission,

agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system or a vocational-technical center;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that result in a numerical score to which percentage points may be added.

(8) "Under honorable conditions" means a discharge or separation from active duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges but does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who was separated under honorable conditions from active duty in the armed forces after having served more than 180 consecutive days, other than for training.

NEW SECTION. **Section 2.** Point preference IN INITIAL HIRING for certain applicants. (1) Subject to the restrictions in subsections (2) and (3), whenever a public

employer uses a scored procedure, an applicant for ~~appointment--to--a-position~~ AN INITIAL HIRING, AS DEFINED IN 39-30-103, must have added to his score the following percentage points of the total possible points that may be granted in the scored procedure:

(a) 5 percentage points if the applicant is a veteran; and

(b) 10 percentage points if the applicant is a disabled veteran or an eligible relative.

(2) A veteran, disabled veteran, or eligible relative may not receive the percentage points provided for in subsection (1) unless the person:

(a) is a United States citizen; and

(b) received 70 or more percentage points of the total possible points that may be granted in the scored procedure.

(3) A disabled veteran who receives 10 percentage points under subsection (1)(b) may not receive an additional 5 percentage points under subsection (1)(a).

NEW SECTION. **Section 3.** Notice and claim of preference. (1) A public employer shall, by posting or on the application form, give notice of the point preference provided in [section 2].

(2) A job applicant who believes he is eligible to receive a point preference shall claim the preference in writing before the time for filing applications for the

position involved has passed. Failure to make a timely preference claim for a position is a complete defense to an action instituted by an applicant under [section 4] with regard to that position.

(3) If an applicant for a position makes a timely written preference claim, the public employer shall give written notice of its hiring decision to the applicant claiming preference.

NEW SECTION. **Section 4.** Enforcement of preference. (1) An applicant who believes he is entitled to but has not been given the point preference provided in [section 2] may, within 30 days of receipt of the notice of the hiring decision provided for in [section 3], submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) After following the procedure described in subsection (1), the applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts that on their face entitle the applicant to a point preference.

(3) (a) Upon filing of the petition, the court shall

order the public employer to appear in court at a specified time not less than 5 or more than 10 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer applied the points under [section 2] and made a reasonable hiring decision. The applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference eligible applicant, the court shall order the public employer to comply with the provisions of [section 2]. In addition, the court shall, upon proper proof, grant an award of backpay, reasonable attorney fees, and costs.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under

subsection (2), the court shall order the public employer to comply with the provisions of [section 2].

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section.

NEW SECTION. **Section 5.** **Retention during reduction in force.** (1) Subject to the restriction in subsections (2) and (3), during a reduction in force, a public employer shall retain in a position:

(a) a veteran, disabled veteran, or eligible relative whose performance has not been rated unacceptable under a performance appraisal system over other employees with similar job duties and qualifications and same length of service; and

(b) a disabled veteran with a service-connected disability of 30% or more whose performance has not been rated unacceptable under a performance appraisal system over other veterans, disabled veterans, and eligible relatives with similar job duties and qualifications and same length of service.

(2) An employee is not entitled to preference in retention under subsection (1) unless he is a United States citizen.

(3) The preference in retention under subsection (1) does not apply to a position covered by a collective

bargaining agreement.

NEW SECTION. **Section 6.** **Adoption of rules.** The department of administration shall adopt rules implementing [sections 1 through 5]. The department's rules apply to all local and state public employers.

Section 7. Section 10-2-402, MCA, is amended to read:

"**10-2-402. Superintendent to be given veterans' preference.** In the selection of the superintendent of the Montana veterans' home, the department of institutions shall apply the preference granted to veterans and disabled veterans under [section 2], but not the preference granted to other persons~~, by~~ under [section 2] or Title 39, chapter 30."

Section 8. Section 39-30-101, MCA, is amended to read:

"**39-30-101. Short title.** This chapter may be cited as the "Montana ~~Veterans'~~ and Handicapped Persons' Employment Preference Act"."

Section 9. Section 39-30-102, MCA, is amended to read:

"**39-30-102. Purposes.** The purposes of this chapter are to ~~recognize veterans and disabled veterans for service to their country~~, recognize past employment discrimination against handicapped persons, and facilitate the habilitation, rehabilitation, and readjustment of ~~veterans, disabled veterans,~~ and handicapped persons."

Section 10. Section 39-30-103, MCA, is amended to

read:

"39-30-103. Definitions. For the purposes of this chapter, the following definitions apply:

~~(1)--"Active-duty"-means-full-time-duty-other-than--for training--in--the--regular--components--of-the-United-States army,-air-force,-navy,-marine-corps,--or--coast--guard--with full--pay--and-allowances.-The-term-does-not-include-monthly drills,--summer--encampments,--initial--training,--or--other inactive--or--active-duty-for-training-in-the-national-guard or-reserves.~~

~~(2)--"Disabled-veteran"-means-an-individual,-whether-or not-he-is-a-veteran-as-defined-in-this-section,-who:~~

~~(a)--served-on-active-duty;~~

~~(b)--has--been--separated--from--service--by--honorable discharge;-and~~

~~(c)--suffers--a-service-connected-disability-determined by-the-United-States-veterans-administration-to--be--30%--or more-disabling.~~

~~(3)~~(1) "Eligible spouse" means:

~~(a)--the--unremarried-surviving-spouse-of-a-veteran-who died-while-on-active-duty-or-whose--death--resulted--from--a service-connected-disability;-or~~

~~(b)~~ the spouse of:

~~(i)--a-disabled-veteran-determined-by-the-United-States veterans--administration--to--have--a-100%-service-connected

disability-who-is-unable-to-use--his--employment--preference because-of-his-disability;

~~(ii)~~-a--person--on-active-duty-determined-by-the-United States-government-to-be-missing-in-action-or-a--prisoner--of war;-or

~~(iii)~~ a handicapped person determined by the department of social and rehabilitation services to have a 100% disability who is unable to use his employment preference because of his disability.

~~(4)~~(2) "Handicapped person" means an individual certified by the department of social and rehabilitation services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and which that limits the individual's ability to obtain, retain, or advance in employment.

~~(5)~~(3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the

legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection ~~(5)~~ (3), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection ~~(5)~~ (3), or current participants in a federally authorized employment program is not an initial hiring.

~~(6)~~(4) (a) "Mental impairment" means:

(i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or

volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

~~(7)~~(5) "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position or a similar permanent or seasonal position with a public employer other than the state. However, the term does not include:

(a) a temporary position as defined in 2-18-101 for a state position or similar temporary position with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative

or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

~~(8)~~(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical center or program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

~~(9)~~(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

~~(10) (a) "Veteran" means a person who:~~

~~(i) served on active duty during time of war or declared national emergency or in a campaign or expedition for which a campaign badge was authorized by the United~~

~~States congress or the United States department of defense; and~~

~~(ii) has been separated from service by honorable discharge.~~

~~(b) The term does not include a retired member of the United States armed forces who is eligible for or receiving a military retirement allowance based on length of service and does not include any other retired member of a public retirement system, except social security, that is supported in whole or in part by tax revenues.~~

~~(11) "War or declared national emergency" means:~~

~~(a) World War I, beginning on April 6, 1917, and ending on November 11, 1918, both dates inclusive;~~

~~(b) World War II, beginning on December 7, 1941, and ending on December 31, 1946, both dates inclusive;~~

~~(c) the Korean conflict, military expedition, or police action, beginning on June 27, 1950, and ending on January 31, 1955, both dates inclusive; and~~

~~(d) the Vietnam conflict, beginning on August 5, 1964, and ending on May 7, 1975, both dates inclusive.~~"

Section 11. Section 39-30-201, MCA, is amended to read:

"39-30-201. Employment preference in initial hiring. (1) (a) Except as provided in 10-2-402, in an initial hiring for a position, if a job applicant who is a veteran,

~~disabled--veteran,~~ handicapped person, or eligible spouse meets the eligibility requirements contained in 39-30-202 and claims a preference as required by 39-30-206, a public employer shall hire the applicant over any other applicant with substantially equal qualifications who is not a preference eligible applicant.

(b) In an initial hiring, a public employer shall hire a ~~disabled-veteran-or~~ handicapped person over any other preference eligible applicant with substantially equal qualifications.

(2) The employment preference provided for in subsection (1) does not apply to a personnel action described in ~~subsection-(5)(b)-of~~ 39-30-103(3)(b) or to any other personnel action that is not an initial hiring."

Section 12. Section 39-30-202, MCA, is amended to read:

"39-30-202. Eligibility requirements. ~~No---veteran, disabled--veteran,~~ An eligible spouse, or handicapped person is not entitled to receive employment preference as provided in 39-30-201 unless:

(1) he is a United States citizen;

(2) he has resided continuously in the state for at least 1 year immediately before applying for employment;

(3) if applying for municipal or county employment, he has resided for at least 30 days immediately before applying

for employment in the city, town, or county in which employment is sought; and

(4) he meets those requirements considered necessary by a public employer to successfully perform the essential duties of the position for which he is applying."

Section 13. Section 39-30-203, MCA, is amended to read:

"39-30-203. Duration of preference. Subject to 39-30-202:,

~~(1)~~ a handicapped person, ~~the~~ or eligible spouse ~~of--a handicapped-person-as-described-in-subsection-(3)(b)(iii)-of 39-30-103,--a--disabled-veteran,-or-the-spouse-of-a-disabled veteran-as-described-in-subsection--(3)(b)(i)--of--39-30-103~~ qualifies for employment preference as long as the disabling condition exists;.

~~(2)--a--veteran,--as-defined-in-39-30-103,-who-is-not-a disabled-veteran,-as-defined--in--39-30-103,--qualifies--for employment--preference-for-no-longer-than-15-years-following separation-from-service--or--for--no--longer--than--5--years following-December-20,-1983,-whichever-is-later;~~

~~(3)--the--surviving-spouse-of-a-veteran-as-described-in subsection-(3)(a)--of--39-30-103--qualifies--for--employment preference--for-as-long-as-the-spouse-remains-unmarried;-and~~

~~(4)--the-spouse-of-a--person--described--in--subsection (3)(b)(iii)--of-39-30-103-qualifies-for-employment-preference~~

~~for as long as the person is missing in action or a prisoner of war.~~"

Section 14. Section 39-30-207, MCA, is amended to read:

"**39-30-207. Enforcement of preference.** (1) An applicant who believes he has not been accorded his rights under this chapter may, within 30 days of receipt of the notice of the hiring decision provided for in 39-30-206, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) The applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts ~~which~~ that on their face entitle the applicant to an employment preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 10 or more than 30 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination pursuant

to ~~subsection (9) of~~ 39-30-103(7), and the applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court ~~has found~~ finds that the applicant is a preference eligible applicant, the court shall order the public employer to reopen the selection process for the position involved and shall grant the applicant reasonable attorney fees and court costs. The remedy provided by this section is the only remedy for a violation of this chapter, and a court may not grant any other relief in an action for violation of this chapter.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to reopen the selection process.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not

conflict with this section."

Section 15. Section 49-2-405, MCA, is amended to read:

"**49-2-405. Veterans' and handicapped persons' employment preference.** The application of an employment preference as provided for in [sections 1 through 6], Title 39, chapter 30, and 10-2-402 by a public employer as defined in [section 1] and 39-30-103 may not be construed to constitute a violation of this chapter."

Section 16. Section 49-3-103, MCA, is amended to read:

"**49-3-103. Permitted distinctions.** (1) Nothing in this chapter ~~shall--prohibit~~ prohibits any public or private employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, ~~which~~ that is not a subterfuge to evade the purposes of this chapter, except that ~~no such~~ an employee benefit plan ~~shall~~ may not excuse the failure to hire any individual; or

(c) from discharging or otherwise disciplining an

individual for good cause.

(2) The application of an employment preference as provided for in [sections 1 through 6], Title 39, chapter 30, and 10-2-402 by a public employer as defined in [section 1] and 39-30-103 may not be construed to constitute a violation of this chapter."

NEW SECTION. **Section 17.** **Extension of authority.** Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. **SECTION 18.** SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

NEW SECTION. **SECTION 19.** TERMINATION DATE. [THIS ACT] TERMINATES JULY 1, 1991.

-End-